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LEGAL MONOPOLY.[1]

INDUSTRIAL monopoly rests on law. Experience does not show that any one man has the wealth, ability and daring to obtain individual ownership of all the coal mines, iron mills or oil refineries in the United States. Monopoly in production can thus be obtained and maintained only under laws that protect combinations of natural persons for that object.

Promoters of industrial monopolies well know the source of their powers. Within the last quarter of a century combinations to control production and prices of staple commodities have taken in succession four distinct forms: the pool, the trust agreement, the stockholding corporation, and the corporation owning a majority of all the manufacturing plants of a particular kind. As the courts have in turn refused legal support to each of the first three forms of combination, their promoters have adopted the succeeding form. The present form of combination, the corporation with a monopoly in manufacturing plants and therefore in their products, is quite as much the creature and creation of the law as were any that have preceded it. Repeal charters that authorize corporations to own or operate plants of the same sort in more than one state, and industrial trusts will disappear. Revoke licenses that permit foreign corporations to monopolize factories in every state, and production will again be regulated by competition. Industrial monopoly in its present form is thus dependent not only on the laws of states that grant roving commis-

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sions in corporate charters, but also on the laws of all the states into which the foreign corporation goes to acquire factories. The extent to which legal support is thus granted to industrial trusts is shown by the fact that in the year 1900, 185 corporations owned 2,216 manufacturing plants scattered over forty-two states and territories.[1]

Monopoly effected by means of a corporation is defended on the assumption that the combination of any number of persons and factories under a corporate charter is legal, though the combination of the same persons and factories in any other way, for the same purpose of monopoly, would be illegal. According to this view the vice of monopoly is not due to its effects on production and prices, but simply to the way in which it is accomplished.

A few decisions of courts rendered during the last decade give some support to monopoly in a single corporation. A case of this sort was Oakdale Company *v.* Garst,[2] decided in 1894, where an injunction was sought to restrain Garst from violating a contract that he had made not to engage in the manufacture of oleomargarine during a period of five years. It appeared in this case that the Oakdale Company had purchased the business of three out of the four companies in New England that were engaged in this line of manufacture. The business of Garst was one of those purchased by the new corporation, but he claimed that his contract was void because of the tendency of the combination to create a monopoly. The court granted the injunction against Garst, but put it distinctly on the ground that there was neither monopoly nor an approach to it by the combination in question, because another strong, independent company remained in New England and there were companies in other parts of the country that might compete in the same field.

Perhaps the strongest case supporting the legal right of a corporation to create a virtual monopoly, by the purchase of a majority of the factories in a particular line, is that of Trenton Potteries Company *v.* Oliphant,[3] decided by the court of New Jersey in 1899. It appeared in this case that, in 1892, there were nine concerns in the United States engaged in the manufacture of san-

[1] U. S. Census, vol. vii, p. lxxv. [2] 18 R. I. 484. [3] 58 N. J. Equity, 507.

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itary pottery ware, and seven of these were located in Trenton, New Jersey. In order to control the prices of this class of pottery, the Trenton Potteries Company was formed under a New Jersey charter and purchased five of the pottery plants in Trenton. Each seller of a pottery plant agreed not to engage in the manufacture of pottery ware in any part of the United States, except Nevada and Arizona, during a period of fifty years. Oliphant was the owner of one of the plants sold to the Trenton Company, and sometime thereafter he again engaged in the manufacture of sanitary ware contrary to his contract. Suit was then brought asking for an injunction against this manufacture as carried on by Oliphant and others. The lower court held that the partial monopoly established by the Trenton Potteries Company was against public policy, and dismissed the suit.[1] On appeal to the highest state court, the decision of the lower court was reversed, and an injunction was granted as to manufacture in New Jersey, but not as to other parts of the territory covered by the contract, because it was not proved that the business sold by Oliphant extended into other states. The court justified the aid thus given to the combination represented by the corporation on the ground that the purchase of competing plants was authorized by its charter, and that the public policy of the state had thus been fixed by the legislature. On this point the language of the opinion was: "The grant of the legislature authorizing and permitting such acts must fix for the courts the character and limit of public policy in that regard."

In a number of other cases state courts have supported minor combinations of manufacturing plants in the hands of a single corporation. It is believed, however, that no court of last resort has held that a corporation may legally establish a complete or virtual monopoly in a particular line by the purchase of most or all of the manufacturing plants of a particular sort in the United States.

The strongest case in the federal courts supporting industrial monopoly in the ownership of factories seems to be that of Metcalf *v.* American School Furniture Company,[2] decided in 1903,

[1] 56 N. J. Equity, 680. [2] 122 Fed. Rep. 115.

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where a minority stockholder sought to have the sale of the plant of his company set aside. It appeared that the American Company was formed to acquire the plants of other concerns engaged in the manufacture of school furniture, and thus to create some degree of monopoly in that business. A part of the defence in the case was that the transfer of the plant in question was entirely collateral to any intention of the American Company to create a monopoly. The court accepted this view of the transaction and refused to set aside the sale, saying in part:

> Great stress is laid upon the point that the transfer of the good will and plant of the Buffalo Company is entirely separate and independent of any intention by the directors of the American Company to create a monopoly in restraint of trade. Careful consideration of the questions here involved constrains me, though with hesitation, to accept this view of the transaction charged in the bill.

As may be seen from this quotation, the decision here went on the ground that the purchase in question was not a part of the scheme to create a monopoly; and the implication clearly was that the scheme itself was illegal.

Turning to the Supreme Court of the United States, it does not appear that there is a decision or even a dictum to the effect that a combination of natural persons in a single corporation with the intent and effect of creating a complete or virtual monopoly in the manufacture or production of a given commodity is legal. On the contrary there are repeated dicta that such a combination is illegal, like the other forms of combination that have preceded it. A case sometimes cited to support the view that the purchase of independent factories so as to give a single corporation a monopoly in production is legal, is that of United States *v.* E. C. Knight Company,[1] decided in 1895. It will be seen on examination, however, that this case leads to no such conclusion. As to the facts of this case, it is to be noted that the monopoly was created not by the direct purchase of the four Philadelphia sugar refineries by the American Sugar Refining Company, but by the purchase of the stocks of the several corporations owning these

[1] 156 U. S. 1.

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refineries. This form of combination, that is the holding by one corporation of the stocks of other corporations to control production or prices, like the pool and the trust agreement, has generally been held illegal by both state and federal courts. In this case the illegality of the combination was of no moment because its acts did not fall within the prohibition of the statute[1] under which the suit was brought, according to the construction given that statute by a majority of the court. On this point the court said:

> The fundamental question is whether, conceding that the existence of a monopoly in manufacture is established by the evidence, that monopoly can be directly suppressed under the Act of Congress in the mode attempted by this bill. . . . Congress did not attempt thereby to assert the power to deal with monopoly directly as such.

On these grounds the court dismissed the bill that had been brought to set aside the sale of stocks of the E. C. Knight and other corporations to the American Sugar Refining Company.

Another case that is sometimes supposed to give the color of legality to monopoly secured by a single corporation in the ownership of factories is Dickerman *v.* Trust Company,[2] decided in 1900. Suit in this case was brought to foreclose a mortgage given by the Columbia Straw Paper Company on some forty mills that it had purchased. The bonds secured by this mortgage were not paid when due, and the trust company holding the mortgage brought suit, which was defended on the ground that the corporation was an unlawful combination. The court rejected this defense and said in part:

> If this were a proceeding in *quo warranto* to attack the organization of the corporation . . . or an action against a member of the combination to enforce any of the provisions of the original contract, the validity of such a contract would become a material inquiry. But in a suit to foreclose a mortgage upon the property of the concern it is difficult to see how the purpose for which the corporation was originally organized can become a material inquiry. . . . It would seem a curious defense if a mortgagor could set up against the mortgage that the property cov-

[1] 26 Statutes at Large, 209. [2] 176 U. S. 181.

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ered by it was used for an illegal purpose unknown to the mortgagee, as, for instance, gambling, and therefore that the mortgage was invalid.

The plain implication here is that the combination represented by the corporation was illegal and would have been so held in a case where that question was involved.

Opposed to the few opinions and dicta where the legality of some degree of monopoly created by the purchase of factories by a single corporation has been upheld, a much larger number of decisions take the opposite view. Richardson *v.* Buhl,[1] decided in 1889, was an action brought to recover money that had been paid under a contract to promote the formation of the Diamond Match Company, which had been incorporated to purchase plants engaged in the manufacture of friction matches. Each person selling a match factory was required to give the Diamond Match Company a bond not to engage in the business in any way that would conflict with the interests of that company. In the course of its opinion the court denied recovery, saying:

> All combinations among persons or corporations for the purpose of raising or controlling the prices of merchandise, or any of the necessaries of life, are monopolies, and intolerable, and ought to receive the condemnation of all courts. In my judgment, not only is the enterprise in which the Diamond Match Company is engaged an unlawful one, but the contract in question in this case, being made to further its objects and purposes, is void upon the ground that it is against public policy.

The important point in this case is that a combination of natural persons for the purpose of monopoly is not made legal by the use of the corporate form, and that it is illegal for a corporation to obtain a monopoly of manufactured products by the purchase of all the instruments employed in their production. It is to be noted that the Michigan court was not construing a statute in this case, but decided it on the principles of the common law. In other words, the court made it a part of the common law of Michigan that monopoly of the instruments of production in any line, acquired by a single corporation through the purchase of

[1] 77 Michigan, 632.

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these instruments, is illegal. To reach this conclusion the court evidently went on the principle announced by it in the case of Wooden Ware Association *v.* Starkey,[1] decided in 1890, where an injunction to enforce a contract in restraint of trade was refused, and it was said:

It is the duty of the court to see that the public interests are not in any manner jeopardized. The state has the welfare of all its citizens in keeping, and the public interest is the pole-star to all judicial inquiries.

In Distilling and Cattle Feeding Company *v.* The People,[2] the Illinois court considered the legality of the purchase by that company of a large number of distillery plants to establish a virtual monopoly in the business. The action was *quo warranto*, brought by the attorney-general to annul the corporate charter of the domestic corporation under the Illinois anti-trust law.[3] In its judgment of ouster against the corporation the court said:

There can be no doubt, we think, that the Distillers' and Cattle Feeders' Trust, which preceded the incorporation of the defendant, was an organization which contravened well-established principles of public policy, and that it was therefore illegal. . . .

But the defendant contends that, while this may all be so, the change in organization from an unincorporated association to a corporation, and the change in the mode of holding the distillery properties of the various corporations formerly belonging to the trust, by surrendering the stock of the corporations, by means of which the control of those properties was formerly maintained, and having the properties themselves transferred and conveyed directly to the defendant corporation, have purged the combination of its illegality. It must be admitted that these changes, so far as they have any effect upon the rights or interests of the former stockholders in those corporations or of the public, are formal rather than substantial. The same interests are controlled in substantially the same way and by the same agencies as before. The nine trustees of the trust, who, as the holders of all the capital stock of the corporations and as a majority of the directors of each, controlled such corporate property, became the subscribers for all the stock of the new corporation, and its board of directors. The

[1] 84 Michigan, 76. [2] 156 Illinois, 448. [3] Laws of 1893, p. 182.

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conveyance and transfer of the properties of the constituent companies to the new corporation was merely a transfer by the trustees to themselves, though in a slightly different capacity, and the former stockholders in the constituent companies simply exchanged their trust certificates, share for share, for stock in the new corporation. That corporation thus succeeds to the trust, and its operations are to be carried on in the same way, for the same purposes, and by the same agencies, as before. The trust, then, being repugnant to public policy and illegal, it is impossible to see why the same is not true of the corporation which succeeds to it and takes its place. The control exercised over the distillery business of the country — over production and prices — and the virtual monopoly formerly held by the trust are in no degree changed or relaxed, but the methods and purposes of the trust are perpetuated and carried out with the same persistence and vigor as before the organization of the corporation. There is no magic in a corporate organization which can purge the trust scheme of its illegality, and it remains as essentially opposed to the principles of sound public policy as when the trust was in existence. It was illegal before and is illegal still, and for the same reasons.

In this case the defendant, a domestic corporation, lost its charter because its stockholders, in its formation and management, had combined to create a monopoly. The Illinois statute provided:

> That a trust is a combination of capital, skill or acts by two or more persons, firms, corporations or associations of persons, or of two or more of them, for either any or all of the following purposes.[1] . . .

In no part of the act was it provided that a single corporation or a combination of its stockholders acting in its name should be regarded as a trust. So far as the statute was concerned, the court might have acted on the fiction that a corporation is a single person, and so might have held that no combination existed. But the court refused to close its eyes to the patent fact that a combination does not cease to be such because the persons composing it have been granted some special privileges by a legislature. The court looked through the fictitious legal person and saw the real

[1] Laws of 1893, p. 182.

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persons that gave it thought, life and action, and who expected to profit by the monopoly they had created.

In the foregoing case a domestic corporation lost its charter. In Harding *v.* American Glucose Company,[1] decided in 1899, the Illinois court had to pass on a similar state of facts as to a foreign corporation. A New Jersey corporation in this case had been formed to purchase the manufacturing plants of the American Glucose Company, another New Jersey corporation owning a factory in Illinois, and of five other corporations. Each of the selling corporations and its officers were bound by agreement with the new corporation not to engage in the manufacture of glucose within one thousand miles of Chicago. Harding, a stockholder of the American Glucose Company, brought an action to have the transfer of the plant of this corporation to the new corporation annulled. The court set aside the deed by which the property had been conveyed, saying:

It makes no difference whether the combination is effected through the instrumentality of trustees and trust certificates, or whether it is effected by creating a new corporation, and conveying to it all the property of the competing corporations. . . . Citizens of Illinois cannot evade the laws of Illinois passed against trusts and combines and defy the public policy of the state, by going into a foreign state, and chartering a corporation to do business in this state in violation of its laws.

The decision of this case was based in part on the Illinois statutes[2] against trusts; but, as in Distilling and Cattle Feeding Company *v.* The People,[3] the court seems to have exercised common-law powers, and gone beyond the mere wording of the statutes, by holding that a corporation formed for the purpose of monopoly is an illegal combination. A similar result was reached by the Missouri court in the case of National Lead Company *v.* Grote Paint Store Company,[4] decided in 1899. In 1891 the National Lead Trust held the stocks of a number of corporations that manufactured the greater part of the entire output of white lead in the United States. Even at that date it was clear enough that

[1] 182 Illinois, 551.
[2] Statutes of 1891, p. 206; 1893, p. 182.
[3] 156 Illinois, 448.
[4] 80 Missouri App. Rep. 247.

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monopoly based on the deposit of corporate stocks with trustees was illegal, and persons interested in the lead trust therefore obtained a corporate charter for the National Lead Company in New Jersey. This corporation purchased the manufacturing plants of the various companies that were interested in the trust, and thus secured a large degree of monopoly in the supply of white lead. The National Lead Company had a St. Louis branch, and sold white lead there to the defendant in this case. Suit was brought to obtain payment for this lead, and it was pleaded in defense that the National Lead Company was an illegal combination, and that therefore the defendant was not liable for the price of the lead, under the Missouri trust act [1] of 1891. This act provided that any combination between persons, partnerships or corporations to regulate or fix the price of any commodity should be deemed a conspiracy, and that the persons or corporations engaged therein should be subject to certain penalties, among which was the inability to recover the price of goods sold. Nowhere in the act was it stated that a single corporation which secured a monopoly should be deemed guilty of such conspiracy. In holding that the corporation could not recover for the goods sold, the court said, in part:

> Hence it must follow that if the stockholders and governing officers of the plaintiff corporation combined with each other to violate any of the provisions of the section under review through the instrumentality of their corporate entity, then the corporation composed by them was a party to such illegal combination within both the letter and the spirit of the above section of the act of 1891. Or, concretely stated, that a combination which is illegal under the anti-trust law, cannot be operated under the cloak of a corporation by its constituent members or governing bodies.

From the foregoing cases it appears that the courts of three states, Michigan, Illinois and Missouri, have reached the conclusion that the organization and management of a corporation to secure a monopoly in the ownership of manufacturing plants of any sort is an illegal combination of the stockholders of that corporation.

[1] Laws of 1891, p. 186.

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Similar results have been reached in the federal courts. The National Harrow Company was formed to manufacture harrows and, apparently, to control that line of business. This company purchased some eighty-five patents on harrows from a number of concerns engaged in their manufacture, paying therefor largely by issues of capital stock. Each manufacturer of harrows was then licensed to continue his business as before, except that a royalty of one dollar was to be paid to the National Harrow Company on each harrow sold, and each manufacturer was bound to make only the style of harrow covered by his license and to sell at prices fixed by the National Harrow Company. One Quick infringed a patent thus secured by the National Harrow Company, and that company brought its bill in the federal court for an injunction against him. In its opinion refusing the injunction the court said:

It seems to me that such a combination is illegal. . . . It seems to me that the court cannot sustain the present bill without giving aid to the unlawful combination or trust represented by the complainant.

This case, National Harrow Company *v.* Quick,[1] decided in 1895, came up in the Indiana district of the federal court. In the following year the United States circuit court decided the case of National Harrow Company *v.* Hench,[2] which came up from a Pennsylvania district. In this case Hench, one of the licensed manufacturers of harrows, had broken his contract with the National Harrow Company by selling harrows at prices below those fixed by that company. Thereupon the National Harrow Company brought its bill in equity asking for damages and an injunction to prevent further violation of the license contract by Hench. In the course of its opinion denying the prayer of the bill the court said:

Now, it is quite evident to me, as well by the papers themselves, as from the testimony of witnesses, that this scheme was devised for the purpose of regulating and enhancing prices for float spring-tooth harrows, and controlling the manufacture thereof throughout the entire

[1] 67 Fed. Rep. 130. [2] 76 Fed. Rep. 667.

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country, and that the combination, especially by force of the numbers engaged therein, tends to stifle all competition in an important branch of business. I am not aware that such a far-reaching combination as is here disclosed has ever been judicially sustained.

In both of the cases just considered the federal courts seem to have gone on the ground that the purchase by the single corporation of eighty-five patents covering nearly all the styles of harrows in use, with the evident intention to secure a monopoly and control manufacture and prices, was itself illegal. Other attempts of single corporations to monopolize the manufacture of particular products have been regarded in the same light. Before 1891 the American Biscuit and Manufacturing Company had purchased thirty-five bakeries located in twelve states. One of these bakeries was sold to the Biscuit Company by Klotz, who was thereupon employed by the company as its agent to operate the bakery plant and its business. Klotz subsequently determined to rescind the sale he had made, began to operate the bakery in his own name, and tendered back to the Biscuit Company the shares of their capital stock which had been given to him in payment for the plant. On this state of facts the Biscuit Company brought an equity suit in the Federal court to prevent further operation of the baking plant by Klotz. This suit was decided by the circuit court for a Louisiana district in American Biscuit and Manufacturing Company *v.* Klotz,[1] in 1901. A Louisiana statute[2] had declared any combination to monopolize commodities illegal. Referring to this statute and to the federal Anti-Trust Act the court said in part, while refusing to interfere with Klotz in his possession of the bakery:

The statutes show that the evil was the hindrance and oppression in trade and commerce wrought by its absorption in the hands of a few, so that the prices would be in danger of being arbitrarily and exorbitantly fixed, because all competition would be swallowed up, so that the man of small means would find himself excluded from the restrained or monopolized trade or commerce as absolutely as if kept out by law or force. If this is the meaning of the defining words, does not this

[1] 44 Fed. Rep. 721. [2] Statute of July 5, 1890.

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corporation, thus glutted with the thirty-five industries of twelve states, disclose an "attempt to monopolize"? So far, therefore, as the complainant's business is a combination in restraint of trade, or is an attempt to monopolize or combine, in the form of a trust, or otherwise, any part of trade or commerce, as these words are properly defined, the law stamps it as unlawful, and the courts should not encourage it.

Another case which involved similar facts, and in which a like result was reached, came before the United States court of appeals from a Michigan district, *viz.*, McCutcheon *v.* Merz Capsule Company,[1] decided in 1896. A New Jersey corporation, the United States Capsule Company, was organized in 1893 to purchase the plants and business of four concerns engaged in the manufacture of gelatine capsules. The Merz Capsule Company was one of these concerns. It executed a deed of its plant to the United States Capsule Company on December 21, 1893, and took back on that date a lease of the same plant in order to work up stock not included in the sale. In payment for its plant the Merz Capsule Company was to receive stock and bonds of the new corporation, the bonds being secured by a mortgage on all its property. Before the above named lease expired, the Merz Company determined to rescind the sale of its property to the United States Capsule Company, and accordingly tendered back the capital stock that had been received in part payment for the plant, and gave notice that it would not carry out the agreement. On this state of facts the United States Capsule Company endeavored to get possession of the plant of the Merz Capsule Company by force, and the latter company brought its bill in equity, asking that the agreements and conveyances entered into as to its plant and business be cancelled, and that the United States Capsule Company be enjoined from interfering with the property in question. The decree of the court affirmed the illegality of the agreement and deed mentioned, and restrained the United States Capsule Company from asserting any title or right to possession under them, saying in part:

Under all these circumstances, to hold that the complainant is estopped to rely upon the illegality of the agreement and conveyance to which it

[1] 37 U. S. Appeals, 586.

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was a party would be to effectuate an unexecuted, unlawful object, and aid in the defeat of a legal prohibition. The door of this court should not be closed against one seeking to extricate himself from an unlawful connection, provided relief is sought without delay and before the contract is executed, or other persons have irrevocably acted in reliance upon its supposed legality.

In this case the federal court seems to have enforced the common law as laid down in Richardson *v.* Buhl,[1] above noted, that the purchase by a single corporation of a number of manufacturing plants, so as to obtain a large degree of monopoly in their products, is illegal.

The question whether a single corporation may legally establish a monopoly by the purchase of most or all of the manufacturing plants of a particular sort throughout the several states has, it seems, never been squarely presented to and decided by the Supreme Court of the United States. Several cases, however, seem to indicate the views of the court as to such a monopoly. One of these cases is Central Transportation Company *v.* Pullman Palace Car Company,[2] decided in 1891 by a unanimous opinion, save that Justice Brown did not sit. This case came up from the United States circuit court for a Pennsylvania district, which obtained jurisdiction because of the diverse citizenship of the parties. The action was brought to recover rent under a lease, by which the Transportation Company, a Pennsylvania corporation, transferred all of its cars, patent rights and contracts to the Pullman Company, an Illinois corporation, for a term of ninety-nine years from February 17, 1870, at an annual rental of $264,000, and by which it also agreed not to make or hire sleeping cars. The Transportation Company had no power of eminent domain, owned no railway, and enjoyed no public or special franchise save the franchise to be a corporation. Suit was brought against the Pullman Company because it refused to continue the payment of rent under the lease, and the defense was in part that the contract was against public policy. In the course of its opinion denying recovery the Supreme Court said:

[1] 77 Michigan, 632. [2] 139 U. S. 24.

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There is strong ground, also, for holding that the contract between the parties is void, because in unreasonable restraint of trade, and therefore contrary to public policy. . . . This case strikingly illustrates several of the obvious considerations for holding contracts in restraint of trade to be unreasonable and void, as compactly and forcibly stated by Mr. Justice Morton in the leading case of Alger *v.* Thacher.[1] They tend to deprive the public of the services of men in the employments and capacities in which they are most useful to the community as well as to themselves. They prevent competition and enhance prices. They expose the public to all the evils of monopoly. And this especially is applicable to wealthy companies and large corporations, who have the means, unless restrained by law, to exclude rivalry, monopolize business and engross the market.

Since the Supreme Court held the lease in this case unlawful because of its tendency to monopoly, there is some ground to think that the outright purchase of all the manufacturing plants of a given sort in the several states, by a single corporation, might be held illegal for the same reason. Dicta in the case of United States *v.* E. C. Knight Company[2] support this view, for the court there said:

Again, all the authorities agree that in order to vitiate a contract or combination it is not essential that its result should be a complete monopoly; it is sufficient if it really tends to that end and to deprive the public of the advantages which flow from free competition.

As has been already pointed out, this case merely decided that Congress had not authorized the court to deal with monopoly in the manufacture of commodities. In the course of his notable dissenting opinion in the Knight case, Justice Harlan said:

Suppose that a suit were brought in one of the courts of the United States — jurisdiction being based, it may be, alone upon the diverse citizenship of the parties — to enforce the stipulations of a written agreement, which had for its object to acquire the possession of all the sugar refineries in the United States, in order that those engaged in the

[1] 19 Pickering, 51, 54.

[2] 156 U. S. 1.

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combination might obtain the entire control of the business of refining and selling sugar throughout the country, and thereby to increase or diminish prices as the particular interests of the combination might require. I take it that the court, upon recognized principles of law common to the jurisprudence of this country and of Great Britain, would deny the relief asked and dismiss the suit upon the ground that the necessary tendency of such an agreement and combination was to restrain, not simply trade that was completely internal to the state in which the parties resided, but trade and commerce among all the states, and was, therefore, against public policy and illegal.

This quotation makes it sufficiently clear that, in the mind of Justice Harlan, the purchase of most or all of the manufacturing plants of a given sort in the United States, in order to control the prices of their products, by a single corporation would be illegal on common-law principles.

The American people, as represented by their courts, stand apparently at the parting of the ways. On the one hand is a line of judicial decisions running back through five centuries and condemning as illegal every form of combination that produces a monopoly in the necessaries of life. On the other hand is a short line of decisions, hardly two decades old, that give much support to the view that any monopoly can find legal support if the combination of natural persons that effects it is carried out with the aid of a corporate charter. The decisions on the one hand leave an open highway for free competition, on the other hand they lead to complete monopoly. Looking back at the dissenting opinion of Justice Harlan in the Knight case, his words on this point, in 1895, were almost a description of present conditions, when he said:

We have before us the case of a combination which absolutely controls, or may, at its discretion, control, the price of all refined sugar in this country. Suppose another combination, organized for private gain and to control prices, should obtain possession of all the large flour mills in the United States; another, of all the grain elevators; another, of all the oil territory; another, of all the salt-producing regions; and another, of all the great establishments for slaughtering animals, and the preparation of meats. . . .

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Glittering generalities about changed economic conditions will neither explain the existence of such monopolies, justify their operations, nor reveal the true source of their power. Human cupidity changes little through the ages. One Wadington who tried to corner the English hop market a century ago, and was heavily fined by Lord Kenyon for his pains, was actuated by much the same motives as those who now seek monopolies through the aid of corporate charters.

Some say, however, that monopoly in the various lines of manufacture is necessary to national prosperity. This assertion lacks both proof in the present and example in the past. England, the greatest commercial empire of the world, has reached its position through an industrial system of free competition. The factories scattered all over the United States, that are being bought up, and in many cases dismantled or closed by great foreign corporations, have been built under a competitive system during a century of the greatest industrial expansion that the world has ever seen.

Most absurd of all is the argument that the law must support monopoly because obtained by combination of natural persons under a corporate charter, though monopoly obtained in any other way is illegal. Listen to the words of Judge Finch in People *v.* North River Sugar Refining Company,[1] in the opinion by which the charter of that corporation was annulled:

> The abstract idea of a corporation, the legal entity, the impalpable and intangible creation of human thought, is itself a fiction and has been appropriately described as a figure of speech. It serves very well to designate in our minds the collective action and agency of many individuals as permitted by the law; and the substantial inquiry always is: What, in a given case, has been that collective action and agency? As between the corporation and those with whom it deals, the manner of its exercise usually is material, but as between it and the state, the substantial inquiry is only what that collective action and agency has done, what it has, in fact, accomplished, what is seen to be its effective work, what has been its conduct. It ought not to be otherwise. The state gave the franchise, the charter, not to the impalpable, intangible, and almost nebulous fiction of our thought, but to the corporators, the in-

[1] 121 N. Y. 582.

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dividuals, the acting and living men, to be used by them, to redound to their benefit, to strengthen their hand, and add energy to their capital. If it is taken away, it is taken from them as individuals and corporators, and the legal fiction disappears. The benefit is theirs, the punishment is theirs, and both must attend and depend upon their conduct; and when they all act, collectively, as an aggregate body, without the least exception and, so acting, reach results and accomplish purposes clearly corporate in their character and affecting the vitality, the independence, the utility, of the corporation itself, we cannot hesitate to conclude that there has been corporate conduct which the state may review, and not be defeated by the assumed innocence of a convenient fiction.

Other arguments failing, it is said that the legality of monopoly in the ownership of factories by single corporations must be supported because great investments have been made in them. How made, and by whom? The real investments of materials and labor in the construction of the purchased plants were made before the blighting hand of the trusts dismantled their equipments and left many a formerly competing plant idle and useless. In the organization of one of these monopolistic corporations, capital stock to an amount several times as great as the first cost of the purchased plants is issued, and then the corporation is bonded for an amount fully equal to this cost, and all the plants are mortgaged to secure these bonds and make them salable. Meantime the capital stock of the corporation, representing usually no investment whatever above the amount covered by the bonds and mortgage, has been in large part turned over to the promoters of the corporation as their profit in the enterprise. By this means a few persons hold a majority of the capital stock and control a corporation whose property has been furnished or paid for by the bondholders. The so-called investment that the law is called upon to protect is thus the assumed right of a few so-called "insiders" to manage or mismanage property for which they have never paid, and which they do not in either law or equity own. In other words, the promoters of the trust have capitalized the assumed right to burden the public with monopoly prices, and now claim a vested interest in the destruction of competition.

Take the strongest possible case in favor of the legality of the

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trust, where some innocent purchaser has paid value for stock in a corporation whose entire assets will hardly satisfy its bonded debt. Is the public in this case to be permanently burdened with monopoly prices because some ill-advised person has been swindled by the purchase of stock from a promoter? But it is said, let the legislature and the courts see to it that no more than a reasonable price is charged for the commodity produced by the monopolized plants. Assuming that this can be done, how is the holder of stock that represents no actual investment to be benefited? In the language of Justice Harlan, when defining the rights of a public service company: "What the company is entitled to ask is a fair return upon the value of that which it employs for the public convenience." [1] This "fair return" will, perhaps, pay the interest on the bonds of the corporation, though some of the plants which these bonds were used to purchase are idle and dismantled; but how can it yield anything for the stock that represents no investment in these plants?

In truth, however, the argument that corporate monopolies should be upheld because those interested will otherwise be injured is unsound at its very root. On what theory of jurisprudence is the law against combinations to be defeated because its enforcement will injure those who have broken it? According to this theory the pool, the trust agreement and the stockholding corporation should all have been supported by the courts, lest some person who had thus broken the law should suffer. But on this point the courts have thought otherwise.

As has been shown above, the main support for the legality of monopolistic combinations under corporate charters is found in an opinion of doubtful authority by the New Jersey court. In this case the court put its decision distinctly on the ground that the domestic corporation involved was authorized by the New Jersey legislature to do what had been done under its charter, and that the New Jersey court was bound by the legislative will. Moreover, the court in this case denied that any monopoly, virtual or complete, had been created. This goes far to reduce the language of this court as to the legality of such monopolies

[1] 169 U. S. 466.

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to mere dicta. Obviously the courts of other states are not bound to respect the powers conferred on foreign corporations by the states which have created them. Neither are the decisions of a court under a local statute of any necessary weight in other states where no such statute exists. If New Jersey likes monopoly, let the legislature and courts there foster it within their jurisdiction, but other states are under no obligation to bow to its legislative and judicial decrees.

Questions involving the legality of corporate combinations for monopoly purposes are pressing upon the courts in many states. The choice between competition and monopoly in industrial affairs must soon be definitely and perhaps definitively made. No doubt can be entertained as to the desire of the great mass of the people that competition be maintained. If monopoly is permanently established, an effort will be made to escape its prices, either along the rough road of profit regulation, or by excursions into the fields of public ownership.

It is hardly to be assumed that the law of five centuries against monopolistic combinations of all sorts is to be overturned by a decade of corporate license. If legislators truly represent their constituents, the licenses of corporations to monopolize forests, mines and factories will be withdrawn. Unless judges forsake the wholesome principles of the common law, monopolistic combinations of natural persons under corporate charters will not be upheld. If, however, corporate monopoly does ultimately triumph over competition, its power will not be due to improved processes of manufacture, to the supposed economies of the concentrated management of scattered factories, nor even to the advantages of production on a great scale. On the contrary, its power will be derived from roving charters to purchase competing plants, granted by the legislatures of some states and sanctioned by the courts of all the others. This triumph of monopoly can come only after private greed has darkened the ancient lights of the common law.

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TRUSTS AND TRADE UNIONS

AND THEIR MUTUAL RELATIONS.

THE most marked feature of present economic conditions is the division of the industrial world into two opposed camps, that of employers and that of workmen. Although the ultimate interests of labor and of capital may be identical, their immediate interests are antagonistic, as must inevitably be the case with buyers and sellers of the same commodity. Workmen have accordingly found it advisable to form associations which, through specially appointed officers, deal with the employers on fairly equal terms. It was the development of these combinations of workmen that aroused the greatest interest in students of industrial conditions and tendencies fifteen or twenty years ago; but at present the attention of economists is more strongly attracted by combinations of capitalists, or trusts. The purpose of these more recent combinations is not primarily to reduce the workers' remuneration but to secure greater economy in production and, in some cases, higher prices for their products. These two movements dominate the world of industry. They are frequently compared with one another: a union, it is asserted and denied, is a labor trust; a trust, an employers' union. But hitherto little serious attention has been given to the relations between the trusts and the unions.

As, in the popular mind, the capitalist and the workman are always striving to thwart each other, it was at first believed that, since the trust was a capitalists' organization, the working classes and their spokesmen, the trade unionists, must necessarily oppose it; and there was special ground for this belief in the early phases of the trust movement, when the dismantling of the less well-equipped establishments deprived many work people of employment. In fact, many trade unionists, retaining for some time their attitude of antagonism towards any action of the employers, did oppose the employers' latest step, the formation of trusts. The Knights of Labor, for example, took up an attitude of hos-

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tility.[1] So also did the Tobacco Workers' International Union, which stated, as the fourth of the objects for which it was organized: "To fight the trust and all trust-made tobacco."[2] In many cases the trusts assumed an equally hostile attitude toward trade unions. In the original deed of the sugar trust, there is mentioned, as the third of its objects: "To furnish protection against unlawful combinations of labor."[3]

With the progress of time, however, it has been found that the displacement of workmen by the trusts has gradually ceased; and the attitude of the trade unions has become less hostile. In the conference on trusts held at Chicago, in 1899, those most favorable to the new development (next to the spokesmen of the trusts) were the theoretical economists and certain of the representatives of organized labor. The prevalent attitude of the latter may be illustrated by the following extracts from a speech by Mr. Henry White, the general secretary of the United Garment Workers of America:

> In America competition has reached a pitch of intensity unknown anywhere else. . . . Instances can be cited where production has been carried on in some large industries at practically no profit, simply with the hope that conditions would improve and because of the inability to withdraw invested capital. Against such destructive warfare combination has come as a relief. . . . In the clothing trades free competition of a certain kind has reached its last ditch and any change would be gladly welcomed as a relief.[4]

Mr. Samuel Gompers, president of the American Federation of Labor, spoke of the "legitimate development and natural concentration of industry."[5]

On the other hand some of the trusts have deliberately favored union labor, while others have retained their old attitude of an-

[1] Industrial Commission, vol. 7, p. 441; and The Trust, Its Book (Bridge, Editor), p. 204.

[2] Industrial Commission, vol. 17, p. 332.

[3] Lexow Trust Commission, 1897, p. 169.

[4] Chicago Conference on Trusts, pp. 324, 325.

[5] *Ibid.*, p. 330.

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tagonism. This makes it difficult to draw any definite conclusion concerning the relations of trade unions and trusts. The final report of the Industrial Commission shows that its members can find no clue to guide them in the matter, for this report declares:

> It is impossible to make any statement that will be of universal application regarding the attitude of combinations towards trade unions. In most cases the position taken seems chiefly a matter of personal preference, or it may have been brought to the combination by the experience of some of the establishments which form it.[1]

The object of the present paper is to set forth certain facts which may throw light on this complex situation, and which perhaps warrant more definite conclusions concerning the mutual relations of trusts and trade unions.

I.

It is often assumed that the growth of trusts has stimulated the growth of trade unions; but inquiry will show that it is hardly possible to point to a single instance where the rise of the trust has been followed by a combination of the workmen employed in the industry affected. As will be noted later, an existing trade union has sometimes been enabled to strengthen itself through an alliance with a trust, but the writer is unaware of a single case where a combination of capital has provoked permanent and successful union among the work people.[2] The reverse order of events, however, is not uncommon. The introduction of large-scale production indeed tends to the growth of trade unions, for in their absence the single workman is at a serious strategic disadvantage in bargaining with the employer; but when the union has been formed the strategic disadvantage is transferred to the employer. He is faced by a compact body of trade unionists

[1] Industrial Commission, vol. 19, p. 622.

[2] Possibly the Tobacco Workers' International Union is an exception, but even it is by no means to be described as successful, as it includes only five or six per cent of the workers. *Ibid.*, vol. 7, p. 192 of digest.

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who assert that other establishments in the trade are giving higher wages or better conditions than his factory, and that he must bring his establishment into line. The possibility of being forced into this position is of course the reason why the employer, while often willing to treat with a committee of his own workmen, usually refuses to negotiate with the officers of their national or international union. He realizes that if once he meets the officials of an organization which has branches throughout the whole country, which has command of information concerning the conditions of trade and labor in every centre of industry, and which is sufficiently well disciplined to act in concert in obedience to any line of policy that may be agreed upon, then he, and not the workmen, will be the weaker party in the driving of a bargain. The employers therefore federate in their turn; and thus, in the end, are brought face to face the consolidated forces of labor and of capital, organized on each side and meeting at regular intervals to draw up agreements regulating wages, hours and conditions of work. This system is now very generally adopted in the staple industries of Great Britain.[1] In America the system of collective bargaining and of annual agreements regulating the whole of the relations between employers and work people in a particular trade is less widespread, but it is growing in favor. Already in the bituminous coal regions,[2] formerly in the anthracite districts,[3] to some extent in the iron, steel and tin industries,[4] in the stove-foundry trade (one of the most effective systems),[5] and in the glass trades,[6] wages are fixed by joint boards representing the majority of workers and employers in the industries affected. In precisely the trades mentioned above there now exist or have existed trusts, *e.g.* the Pittsburg Coal Company,[7] the combination of anthracite operators, the United States Steel Corporation with its subordinate companies, the window-glass and flint-glass trusts. Even more direct evidence than this mere coincidence can be adduced. Mr. Roberts, in his recent book on the anthracite coal industry, points

[1] Webbs, Industrial Democracy. [2] Industrial Commission, vol. 17, p. 326.
[3] *Ibid.*, vol. 17, p. 327. [4] *Ibid.*, vol. 17, p. 339.
[5] *Ibid.*, vol. 17, p. 347. [6] *Ibid.*, vol. 17, p. 361.
[7] This combine was not, however, successful in establishing the monopolistic power it had hoped for.

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out how the rise of the trade unions stimulates combination among the capitalists.[1] And in the stove foundry trade there exists, alongside of the organization dealing with relations with employees, another association dealing altogether with the commercial side of the business, and to a large extent officered by the same men.[2]

While these facts are by no means conclusive, there seems at least to be more reason for holding that trade unions have fostered the growth of trusts than that trusts have fostered trade unions. But the existence of trade unions is, of course, only a contributory or minor cause in the development of the trusts.

II.

If it be granted that trusts do not as a general rule cause the growth of trade unions, there still remains the question as to their effect on the workmen's organizations and on the position of the employees generally. It is perfectly evident that the Lexow Trust Commission of 1897 believed that the trusts were a dangerous menace to the workingman. In its report is to be found the following passage:

> Another advantage is alleged to be that of better wages and more constant employment. We are unable to reach this conclusion. No part of the profit arising from admitted economies and resulting in large dividends on inflated stocks has reached labor in the form of higher wages, while the claim of constancy of employment is negatived by the fact that factories in operation for a generation have been closed and that workingmen, more or less continually employed for years in a factory independently operated, have been discharged on its absorption by the combination.[3]

This passage was written in 1897. Three years later the situation was so far changed that we find the glass trust (The National Glass Company) deliberately unionizing all the establishments

[1] The Anthracite Coal Industry, pp. 69, 70, 78.
[2] Industrial Commission, vol. 7, pp. 860, 867.
[3] Investigation of Trusts, N.Y. Senate Documents, 1897, no. 40, p. 17.

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under its control,[1] and Mr. Schaffer, the president of the Amalgamated Association of Iron, Steel and Tin Workers, expressing an opinion decidedly favorable to trusts.[2] It appears, then, that caution is necessary in drawing conclusions from the conditions obtaining at any given moment. Caution is further required because of the difficulty of obtaining exact information.[3]

With these warnings to the reader, the writer takes up, first, the cases where a noticeable friendliness prevails between the two organizations.

The case of the flint-glass trust, referred to above, is one of the most remarkable. The story of its formation, as told in the report of the Industrial Commission, presents many of the familiar features of reckless over-production, fierce competition and absence of profits or even positive loss on the capital invested.[4] In 1899 the question of a combination was discussed and arrangements were made for the merging of nineteen concerns into a single corporation to be entitled the National Glass Company. Its method of organization differed in several respects from that of most trusts; it seems indeed to be nearer akin to a German cartell than to an orthodox American combine,[5] and it was not formed by a promoter, but by a committee of manufacturers. There was no over-capitalization, and no complete centralization of management.[6] But for our present purpose the most interesting point about the flint-glass trust is its attitude toward that

[1] Industrial Commission, vol. 7, p. 831. [2] *Ibid.*, vol. 7, p. 395.

[3] The facts set forth in this paper are derived mainly from the evidence taken before the Industrial Commission, but that body did not direct any special attention to this matter, and not infrequently the evidence of the witnesses stops precisely at the point where for our purpose further light is most needed. A theoretical economist who is not in direct and immediate touch with the business world may easily be misled by such partial and incomplete information as can be gathered from government reports, commercial and trade-union journals, and occasional conversations with business men.

[4] Industrial Commission, vol. 7, pp. 896 *et seq.*

[5] For a discussion of the differences between trusts and cartells, see Aschrott, Die amerikanischen Trusts (Tübingen, 1889); de Rousiers, Les Syndicats industriels de producteurs (Paris, 1901), p. 119; Grunzell, Über Kartelle (Leipzig, 1902).

[6] Industrial Commission, vol. 7, p. 829.

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union whose members it employs — the American Flint Glass Workers' Union. When the combination was in process of formation, the leaders of the men came to the organizers and pointed out that, of the nineteen concerns which were to be absorbed, twelve were union and seven non-union; that the rules of the Flint Glass Workers' Union did not permit the same company to employ both union and non-union men; and that refusal to recognize the union in any of the plants owned by the combine would lead to a strike.[1] The labor employed in this industry is highly skilled, and the union, which was founded as far back as 1878, numbers about 10,000 members and includes about eighty-five per cent of the men in the trade.[2] If the threatened strike had been declared, non-union men could not possibly have been secured in sufficient numbers to carry on the business successfully, independent competition would have arisen, and the trust would have collapsed. The directors decided to take the course of recognizing and treating with the union, though it is evident that some of them adopted this plan with great reluctance.[3] One witness, however, suggests a further and interesting reason for the willingness of the majority to treat with the union — a willingness that is noticeable in every branch of the glass trade, save in the manufacture of plate glass. It is asserted by Mr. Hammett, formerly treasurer of the Window Glass Cutters' League, that the reason is to be found in the very high proportion which the cost of labor bears to that of the other factors of production in the glass industry.[4] Competent witnesses say that it amounts to seventy-five per cent of the total cost in the window-glass trade, and sixty per cent in the flint-glass trade.[5] Now an association of manufacturers is greatly helped, both in discovering a basis for prices and in maintaining the level of prices, if it is assisted by the union in maintaining a common level of wages. "Organized labor," says Mr. Hammett, "puts them all upon the same footing as to the question of wages to go into the market."[6] In another branch of the trade, glass-bottle blowing, the same

[1] *Ibid.*, vol. 7, p. 831. [2] *Ibid.*, vol. 15, p. 425. [3] *Ibid.*, vol. 7, p. 898.
[4] *Ibid.*, vol. 7, p. 927. [5] *Ibid.*, vol. 7, p. 838. [6] *Ibid.*, vol. 7, p. 827.

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set of circumstances appears even more clearly, although at the time when the evidence was taken a trust had not been formed.[1]

The immediate effect of the formation of the flint-glass trust was an advance in prices. Common tumblers which had been ten cents a dozen were raised to sixteen cents; blown tumblers rose from twenty cents to twenty-five cents.[2] The trust managers, however, asserted that the increase was no more than was necessary in order to secure a fair margin, and that there were no special complaints from those who handled the trust's goods by reason of the advance in prices.[3] Wages were increased five per cent,[4] according to one witness; another witness, who had operated a non-union factory prior to the combination, said that the rise was twenty-five per cent,[5] and hours of labor were decreased. At the same time the stockholders received a dividend of ten per cent.[6]

In the window-glass trade a somewhat similar situation existed. The trade union had at one time absolute control: every workman in every window-glass factory was a union man. The union made rules concerning the admission of apprentices and enforced a very short working week — forty hours.[7] There were some internal dissensions among different branches of the workers prior to 1900. Complete amalgamation was secured for a time, but a fresh rupture occurred subsequent to the formation of the trust. In this case also it was stated that many manufacturers were favorable to the union and to the system of yearly wage agreements, because of the consequent enforcement of a uniformity of wages which minimized competition.[8]

Since its formation the trust has maintained special agreements with the work people under which the factories are closed for five or six months every year, in order to keep up the level of prices.[9] The trade union operates some coöperative factories, which have also an agreement with the trust to close down annually for sev-

[1] See an interesting dialogue, too long for quotation, on p. 108 of vol. 7 of the Industrial Commission's Report.

[2] *Ibid.*, vol. 7, p. 897. [3] *Ibid.*, vol. 7, p. 839. [4] *Ibid.*, vol. 7, p. 834.
[5] *Ibid.*, vol. 7, p. 897. [6] *Ibid.*, vol. 7, p. 897. [7] *Ibid.*, vol. 7, p. 44.
[8] *Ibid.*, vol. 7, p. 46. [9] *Ibid.*, vol. 13, p. 579.

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eral months.[1] And in this one case the trust has taken a further step in its relations with the trade union. It not merely recognizes the union and shares with it some part of its monopolistic gains; it also endeavors to make a bargain that the supply of labor shall be cut off from the independent producers,[2] following in this respect the plan for coöperation of capital and labor so loudly advocated by Mr. E. J. Smith,[3] and adopted in the Birmingham Bedstead Alliances (now dissolved). In an address by the president of the union, there occurs the following passage:

Heretofore we have stipulated that manufacturers signing our scale are not permitted to employ any men who do not belong to our organization. This year we will agree not to furnish a scale to any concern[4] that does not belong to the manufacturers' organization. The manufacturers are justified in making this request as they have acceded to our demands in this regard for years.[5]

The trust also used the power of the trade union to compel the independent manufacturers to restrict production by agreeing to a long shut-down in the summer. An increase of ten per cent in wages was promised,

provided the large majority of the factories, coöperative and independent, close down this month when the American[6] factories stop, and next fire[7] the great majority must start and stop at the same time as the American factories.[8]

Soon after its formation, the combine also set aside in trust for the union a block of stock, and actually admitted the president to the board of directors, on condition that the union should always keep its factories manned.[9] While never openly proclaimed, it

[1] *Ibid.*, vol. 13, p. 566. [2] *Ibid.*, vol. 17, p. 364.

[3] See E. J. Smith, The New Trades Combination Movement (London, Rivingtons, 1899).

[4] Nor, in consequence, to permit unionists to work for that concern.

[5] *National Glass Budget* (Pittsburg), Aug. 2, 1902.

[6] *I.e.* the factories of the American Window Glass Company — the trust.

[7] *I.e.* period of work when the fires are in constant operation.

[8] *Commoner and Glass Worker* (Pittsburg), May 10, 1902.

[9] *Ibid.*, Jan. 17, 1903.

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was commonly understood that the union was not merely to supply all the labor needed by the trust, but to restrict the number of workmen available for the independents. The union, however, was unable, owing to strife in its own ranks, to fulfil its obligations, and the stock was forfeited. But it is easy to see how such a treaty with a union of skilled and highly organized workmen might make the trust practically impregnable as possessor of a monopoly of both instruments of production and skilled men.

In the glass-bottle industry a trust has not yet been formed, and it is freely admitted that a successful combination can come about only by the coöperation of both workmen and capitalists. At a meeting of the manufacturers

> it was decided to ask the help of the workers in bringing about better conditions in that branch of the industry by agreeing to delay the start of the factories next fall. . . . The only way successful curtailment of production can be brought about was decided to be with the coöperation of the organized workers.[1]

The workers on their side are far from being averse to such cooperation. A trade unionist writes in the trade journal:

> As the manufacturers themselves practically admitted their inability to effect an organization by their failure to do so, I would suggest that the G. B. B. A.[2] help them out. I would have the manufacturers' organization meet prior to the conference of the two wage committees next summer and adopt a minimum selling list, and at the conference have this list presented. This list, after its adoption by the conference, to be printed side by side with the blowing list[3] and our factory committee to present the same to each firm in the business, and we then protect the selling list in precisely the same manner as we do the blowing list, namely, at the first evidence of cutting prices the members of our organization to withdraw from such factory.[4]

It appears that these proposals have not yet been put into operation; the simple fact, however, that they have been put forth by

[1] *Commoner and Glass Worker*, April 10, 1902.
[2] Glass Bottle Blowers' Association.
[3] Giving workers' wages on piece-work scale.
[4] *Commoner and Glass Worker*, Jan. 25, 1902.

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both sides to the bargain is sufficient to show the probable trend of events.

The now defunct National Wall Paper Company was formed in 1892, not through the agency of a promoter but by the efforts of the individual manufacturers, and it was not over-capitalized. It has been for many years the custom to shut down factories for several months in each year, and in 1894 the factories were closed for a longer period than usual. The lack of work caused dissatisfaction among the employees; and the two unions of skilled work people interviewed the managers,

> and before they would go ahead for the next year's work they made a demand that we give them eleven months' continuous employment, and to that demand we acceded. . . . And it would have embarrassed us very much not to have granted their demands, situated as we were.[1]

The dissatisfied employees, who were highly skilled,[2] succeeded in obtaining a very considerable rise of wages in addition to the longer period of employment.[3] They found that the existence of a trust was of great assistance to labor in enforcing its demands. "It is much easier," Mr. Burn testified, "to replace the amount of skilled labor required for one factory than it is for twenty factories."[4] But it never occurred to the National Wall Paper Company to follow the plan advocated by Mr. E. J. Smith and adopted by the Birmingham Bedstead Alliances and by the window-glass trust, *i.e.* to make use of this scarcity of skilled labor to embarrass its competitors, by bargaining with the union that in return for the privileges granted by the trust it should not permit its members to enter the employment of independent firms.[5]

Turning now to the iron, steel and tin industries we find it a little difficult to distinguish the various threads of development, because the different trusts have adopted dissimilar policies. One or two interesting facts, however, may be set forth. The two par-

[1] Industrial Commission, vol. 13, p. 293.
[2] Lexow Trust Commission, p. 688. Industrial Commission, vol. 13, p. 293.
[3] *Ibid.*, vol. 13, p. 293.
[4] *Ibid.*, vol. 13, p. 293.
[5] Lexow Trust Commission, p. 699.

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allel tendencies, towards unionism among the workers and combination among the capitalists, appear in the iron and steel industries; and here first, in the United States, were wages and conditions of employment determined by annual joint agreements.[1] In the different branches of this industry the percentage of organized men varies to a considerable extent. About two-thirds of the entire puddling industry is organized. Among iron and steel workers, the proportion is only one-half. In the sheet-iron branch it is higher, eighty-five to ninety per cent. Among the tin-plate workers about ninety-five per cent are organized in two unions.[2] As the tin workers are so highly organized, it is not surprising that the trust preferred to recognize them rather than risk a strike. It not only continued to treat with the union in those plants where unionism was established prior to the formation of the trust, but it further permitted several non-union establishments to be drawn into the organization.[3] When the trust was organized, the tin workers received an advance in wages of fifteen per cent, and in those mills which had previously been non-union, the advance was as much as thirty-two per cent.[4] Wages are based on a sliding scale with a fixed minimum, and thus the workers share in the high prices received by the trust. "They are the best paid men in the country," said one witness; "they are getting their full share." [5]

In the other branches of the iron and steel industry unionism is not so strong; and this fact is reflected in the dealings of the various iron and steel combinations with the Amalgamated Association of Iron, Steel and Tin Workers. The Carnegie Company, it is well known, refused to deal with the unions after the disastrous Homestead strike of 1892. In fact, when it became known that some of the employees of the company had formed a lodge of the Amalgamated Association, the offenders were promptly discharged.[6] The National Steel Company and the American Steel Hoop Company both recognize the Amalgamated Association and, by means of conferences, establish each year a fixed

[1] Industrial Commission, vol. 17, p. 339.
[2] *Ibid.*, vol. 7, pp. 85, 383.
[3] *Ibid.*, vol. 1, p. 928.
[4] *Ibid.*, vol. 7, p. 383.
[5] *Ibid.*, vol. 1, p. 869.
[6] *Ibid.*, vol. 7, p. 385.

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rate of wages, based on a sliding scale. Only about half their workers are organized, but the one scale governs the wages of all.[1] The Federal Steel Company also settles wages by conferences between men and managers, but the Amalgamated Association was recognized and its scale signed only in some of the mills forming the combination.[2]

The American Steel and Wire Company on the other hand, though it has never been asked to recognize the union, states through its president that, if such a request were made, it would certainly be refused. But wages are fixed by conference with mill committees and are usually similar to the union scale. Apparently the men recognized that in this case more was to be gained by not pressing the question of the recognition of the union; but there seems good ground for believing that the mill committees consisted largely of union men and acted more or less under the direction of the union officials.[3]

It is interesting to observe that the unionists thoroughly approved of the movement towards consolidation. Mr. Schaffer, president of the Amalgamated Association of Iron, Steel and Tin Workers, when asked what was his opinion of trusts and concentration of capital, replied that so far the effect had been beneficial and that he believed the generality of the members of the association would "prefer to have these larger corporations, syndicates, trusts or combinations than deal with the smaller mills." [4]

Apparently the system of "exclusive agreements," or refusal of the union to work for any employer not in the masters' association, was just beginning to evolve. Mr. Schaffer testified:

> We have a very complete system. . . . We have been fixing the rates up, and we have had the coöperation on the part of the manufacturers. All that is necessary to make harmonious relations.
>
> *Q.* Do they act in good faith? *A.* Oh yes, splendid gentlemen. Our whole difficulty comes from some one who will not go in on that. In fairness to the other employers we must compel him to make the same price or withhold our labor from him.
>
> *Q.* Have the manufacturers any way of compelling some one man-

[1] *Ibid.*, vol. 1, pp. 946, 948, 955.
[2] *Ibid.*, vol. 1, p. 983.
[3] *Ibid.*, vol. 1, p. 1012.
[4] *Ibid.*, vol. 7, pp. 395–96.

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ufacturer to give in? *A.* Only by withholding our work from him; keeping the skilled workmen away from him. . . . We do that ourselves. We think it only fair to do that with them; to protect them all we can.[1]

We are now in a position to understand the situation when the United States Steel Corporation was formed. The union of the skilled workers of the combine was at that time all but supreme among the tin workers, and commanded the allegiance of about half the labor in iron and steel. Many of the constituent corporations making up the great trust had recognized the union; others, however, had refused to treat with it. The union leaders believed that, exactly as the tin workers and the glass workers had used the capitalists' organization to strengthen their own position, so they, by refusing to work for any mill in the combination unless all were unionized, could so embarrass the newly-formed trust that their demands would be readily granted and the union would become straightway supreme throughout the whole body of workers. It was, as is pointed out by Carroll D. Wright, essentially a fight for recognition, not for increase of wages or betterment of conditions.[2] But the leaders miscalculated their strength. They controlled only a bare majority of the labor and were dealing with energetic men, some of whom were vigorously opposed to trade unionism. The strike ended practically with a restoration of the *status quo;* but some plants which had been union were henceforth to be non-union. To-day in some concerns of the steel trust unionism prevails; in others it remains absent.

In the bituminous coal field there are evidences of harmony and coöperation between the trade unions and the combinations of capitalists, although up to the present none of the latter has reached the dimensions of a trust. The formation of the Pittsburg Coal Company, embracing 140 properties, was welcomed by the employees, and relations between the combination and the trade union were entirely harmonious.[3] For this fact there was one very obvious reason. Wages were paid, as in many branches

[1] Industrial Commission, vol. 7, p. 96.
[2] *Quarterly Journal of Economics*, vol. 16, p. 62.
[3] Industrial Commission, vol. 13, p. 101.

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of the iron and steel trade, on a sliding scale based on the price of coal and with a fixed minimum.[1] The combine hoped to establish a monopoly and raise prices. The workmen evidently welcomed such a course, as it would lead to a rise in their own wages. On the other hand, many of the employers are friendly towards the union, because the existence of a steady level of wages eases the force of competition, which, owing to the large and scattered deposits of bituminous coal, is especially strong in the mining of that commodity. One employer says:

> The only fault I have to find with the labor organization is that they are not able to regulate matters so that the entire thing would be uniform. . . . The only drawback is that they are not strong enough.[2]

In the railway world competition is not yet eliminated; there no trust of the industrial type exists. But it may perhaps be worth while to inquire into the attitude of the trade unions — the railway brotherhoods — towards pooling and consolidation. It will be found that they unanimously object to rate wars. In the document drawn up for the Industrial Commission by the chiefs of the five railway brotherhoods or orders, *i.e.* engineers, firemen, conductors, trainmen and telegraphers, we find passages emphatically condemning cut-throat competition between railroads:

> If the practice of accepting business at a loss is continued, after all other economies have been inaugurated the wages of the employees will naturally become the object of consideration or attack. . . . We have been of the opinion that the government should be very careful in exercising or extending its right of control of the railways, but if the railway officers themselves cannot or will not prevent such ruinous and disastrous wars under the guise of competition, the government should assume the rôle of guardian for them and in the interests of the shippers, the dealers, the travelling public and the railway employees, take such steps as may be necessary to establish and enforce a minimum scale of rates or in some other way to effectually stop these insane departures from business principles which seem to be becoming somewhat periodical in their recurrence.[3]

[1] *Ibid.*, vol. 13, p. 101.
[2] *Ibid.*, vol. 12, p. 75, and also p. 29.
[3] *Ibid.*, vol. 4, p. 69; *cf.* also vol. 9, p. 71.

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And the president of the New York Central Railroad says that the employees are gradually coming round to the view that unrestrained competition is bad for themselves as well as for their employers "and are rather inclined to help the railroad in averting injurious legislation." [1]

The brotherhoods appear, on the whole, to approve of consolidation, because by its means the advantages gained by their organizations on strong lines are extended to weak local roads. The same views with regard to rate wars and consolidation are held by the other unions of railroad employees which do not rank with the five brotherhoods.[2]

While the employees are coming to favor the policy of the railroads with regard to consolidation, the companies on their side regard the brotherhoods, as a general rule, with approval and willingly treat with them concerning wages and conditions of work. The president of the "Big Four" says emphatically, "We have got along better since we had organizations than we did before." [3]

In the case of one other trust we find a noteworthy degree of cordiality to the trade union. The president of the former asphalt trust states:

> I believe that union is better for business men, for laboring men and for all. Almost all our work is done by union labor. Coöperation conserves force, and is advantageous to society, though the power of consolidation may be abused either by the workingmen or by the employers. Our relations with labor organizations are very friendly.[4]

III.

There are industries, however, in which the trust and trade union display no such friendly feeling towards one another. The following trusts state that they do not recognize union labor: the biscuit trust, the [5] General Chemical Company,[6] the cordage trust,[7]

[1] Industrial Commission, vol. 4, p. 70.
[2] *Ibid.*, vol. 4, p. 256.
[3] *Ibid.*, vol. 4, p. 291.
[4] *Ibid.*, vol. 13, p. 679.
[5] *Ibid.*, vol. 13, p. 720.
[6] *Ibid.*, vol. 13, p. 675.
[7] *Ibid.*, vol. 13, p. 140.

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the rubber trust,[1] the Pressed Steel Car Company,[2] the whiskey trust,[3] the salt trust.[4]

Concerning the sugar trust we learn that the laborers whom it employs are almost exclusively unskilled and belong to the lowest rank of foreign immigrants — Poles and Bohemians. They are not in any union.[5] Evidence of a somewhat similar nature is given with regard to the Standard Oil Company. To one witness the question was put: "Do the Standard Oil Company and the independent producers look with favor upon labor organizations?" He answered:

> So far as I am informed on the subject, I believe they do, although so far as labor organizations apply to the oil industry we have very little of it. It is a matter of individual contract and the wage is dependent on the skill of the operator. For that reason we have very little of the union of labor there.

Both the sugar trust and oil trust insist, however, that they pay good wages and treat their men well, and one of the Standard Oil magnates states that he believes in the right, and indeed the duty, of labor to organize.[7] But in view of the general unorganized condition of the oil workers, and the fact that this witness denounces demagogic labor leaders, we are perhaps justified in regarding his expression of belief in unions as a pious opinion of little practical importance.

At one time, however, the oil trust formed a temporary alliance with a trade union. In the year 1887 the trust and the association of producers of raw oil arranged for a "shut-in" to relieve the glut in the market and put a stop to falling prices; and for once thought was taken of the workers who would be thrown out of employment by the limitation of production. 2,000,000 barrels were set aside to compensate the workingmen. They received one dollar a day, distributed through their organization,

[1] *Ibid.*, vol. 13, p. 85.
[2] *Ibid.*, vol. 13, p. 721.
[3] *Ibid.*, vol. 13, p. 256.
[4] *Ibid.*, vol. 1, p. 189.
[5] *Ibid.*, vol. 1, pp. 128–29. These facts seem to suggest that the clause stating that opposition to illegal combinations of work people was one of the objects of the trust was merely a blind. See above, p. 194.
[6] Industrial Commission, vol. 1, p. 483.
[7] *Ibid.*, vol. 1, p. 542.

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the Well Drillers' Union. The reason for this unusual generosity was that "the drillers could have made a failure for the producers, had they been so determined. Enough of them could have got together to start drilling on their own account." [1] The workmen not merely secured compensation for the period of the "shut-in," but also obtained a raise of wages, when work was resumed.

In the case of the cotton-thread trust little information concerning the position of the employees is available. But we learn that the large textile businesses in Massachusetts commonly refuse to recognize the labor unions,[2] which save in a few highly skilled trades "are very weak." [3]

The few ascertainable facts about the situation in the bicycle trade are not without interest. In the list of general aims given in the preamble to the constitution of the International Association of Allied Metal Mechanics, this union declares its

> opposition to trusts and combinations of capital, which act not alone to curtail competition and limit production, but are used as weapons to crush and degrade the wage-worker. Such trusts are fast reducing the wage-worker to a degree of slavery without parallel in the world's history.[4]

These words are more fiery than the circumstances of the case seem to warrant. The American Bicycle Company assumed towards organized labor an attitude similar to that adopted by many of the steel combinations. It permitted the managers of individual factories to make what arrangements they pleased with the union. In one or two plants union labor is used; in others it is not.[5]

There are a few trusts which display not merely indifference but hostility to organized labor. The Glucose Sugar Refining Company employs no union labor. As a general rule its men have not wished to belong to unions, and no unions have been organized among them — probably because they were unskilled. Unions were formed among the machinists and firemen, and in

[1] Industrial Commission, vol. 1, p. 431, *cf.* also p. 483.
[2] *Ibid.*, vol. 7, pp. 913, 915.
[3] *Ibid.*, vol. 17, p. 419; *cf.* vol. 15, p. 445.
[4] *Ibid.*, vol. 17, p. 231.
[5] *Ibid.*, vol. 8, p. 131, 32.

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some cases strikes resulted on grounds which the company considered frivolous or unjustifiable. Owing to the difficulty the company has had with these few union men, it does not favor trade unions in its business and it has never at any time dealt with the unions as such.[1] The watch-case trust has apparently shown itself hostile to organization among its workers.[2] The biscuit trust (The National Biscuit Company) states that it has never had any trouble with labor unions or other labor organizations;[3] but its products are on the "We don't patronize" list of the American Federation of Labor[4] — a fact which seems to indicate that it is considered an unfair employer by the general body of unions.

But of all the conflicts between trusts and trade unions, the most notorious is that between the tobacco trust and the Tobacco Workers' International Union. The president of the trust — *i.e.* of the two affiliated companies, the Continental and the American — states that, while he has no objection to the organization of the laborers employed by his companies, the companies take no account of the unions. "We were not going to ask our employees to join a church or a union." This passive attitude looks a little more threatening when Mr. Duke gives a further explanation of his views:

> We do not propose to have them organize and inaugurate and lay down rules by which we are to govern our factory.
>
> *Q.* Suppose they simply have rules to run their own affairs? *A.* That is all right.

But when one of the commission quietly suggested that rates of wages and hours of work are, after all, what workmen usually organize to fight for, and that these questions are obviously "their own affairs," Mr. Duke was clearly a little confused at the, to him, apparently novel idea.

> *Q.* Do you not think that the 30,000 men in your employ have as much right to say what the wages and hours of work shall be in that trade as you have? *A.* Why, sure. We do not deny them that right.

[1] *Ibid.*, vol. 13, p. 718.
[2] *Ibid.*, vol. 17, p. 297.
[3] *Ibid.*, vol. 13, p. 720.
[4] *Federationist*, February, 1903.

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Q. Is not that practically all they organize for? *A.* I do not know what they organize for; they have not bothered us about organizing.[1]

The leaders of the trade union, on the other hand, state definitely that the hostility of the trust is the main reason for the weakness of their organization.[2] This trust turns a union into a non-union factory. It refuses to have dealings with a "walking delegate." It considers a trade union an "outside influence," rightly placed as far aloof as a church or a political organization.

IV.

From this recapitulation of the scattered and incomplete references to the relations between labor unions and combinations of capitalists contained in the report of the Industrial Commission, it is apparent that these relations are quite dissimilar in the various industries. The question then presents itself: Can we find any differences in these various branches of manufacturing which will explain the different attitudes of the employers? In the first place, it should be observed that the strength of the trade union is the most important factor in the situation. The glass workers' unions are exceedingly strong, controlling a very large proportion of the men employed in the industry.[3] So also are the tin-plate workers, and the bituminous miners, while on the other hand there appear to be no unions at all among sugar refiners, oil refiners, chemical workers and the employees of whiskey distillers. The textile unions are very weak;[4] so also are the unions among tobacco workers.[5] We must then ask what determines the relative strength or weakness of the union. There is commonly one all-important factor, the skill of the workers. The glass workers are highly skilled, also the tin-plate workers, the railroad men, and employees of the wall-paper manufacturers. And in fact a little consideration will show that a strong union of unskilled labor is almost impossible. Organization can be built up only on the

[1] Industrial Commission, vol. 13, p. 325. [2] *Ibid.*, vol. 7, p. 405.
[3] *Ibid.*, vol. 7, p. 44; vol. 17, p. 172. [4] *Ibid.*, vol. 17, p. 419. [5] *Ibid.*, vol. 17, p. 320.

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basis of some special power or quality that distinguishes the members from other men. Absolutely unskilled labor cannot be successfully unionized, for it is impossible to control the potential competition of the men who are unsuccessful in other trades. So too any trade which is likely to be entered by colored or alien labor, or by that of women or children, will be difficult to organize and still more difficult to keep organized. In confirmation of these views we find that the railway brotherhoods, in some respects the strongest of all labor unions, are free from all these forms of competition. Railway labor is a prerogative of the American male citizen. Neither negroes, women nor immigrants are trusted to run trains or to collect fares. In most of the branches of the iron and steel industries, immigration is an important factor, which may account for the comparative weakness of some of the unions.[1] In the tin-plate industry there are, indeed, a considerable number of immigrants, but these are highly skilled workmen from Wales, accustomed to a high standard of living, and even more favorable to labor organizations than are native Americans.[2] The glass workers are highly skilled,[3] and have moreover strengthened their position of economic advantage by stringent apprenticeship rules. The treasurer of the Window Glass Cutters' League says:

> In our league every man that is working has a right to teach his sons or brother. And then, outside of that, it depends on the demand for cutters. We do not want to teach more than just enough to keep supplied. We have done that all along with exceptions.[4]

Another witness says, concerning the attitude of the manufacturers: "When we started to regulate the apprenticeship system they objected some, but they submitted, because we had the power in our hands through the organization."[5] The same union at one time imposed upon foreigners an initiation fee of $500,[6] and was instrumental in getting the first contract-labor law passed.[7]

[1] *Ibid.*, vol. 15, p. 425.
[2] *Ibid.*, vol. 7, p. 393.
[3] *Ibid.*, vol. 7, p. 44.
[4] *Ibid.*, vol. 7, p. 928.
[5] *Ibid.*, vol. 7, p. 45.
[6] *Ibid.*, vol. 7, p. 928.
[7] *Ibid.*, vol. 7, p. 44.

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The Glass Bottle Blowers allow one apprentice to every fifteen journeymen, a ratio which seems hardly sufficient to keep up the number of trained men needed.[1] The by-laws prohibit the admission of foreign workmen save with the consent of the president and executive board. In the iron and steel trades there are no apprenticeship rules, but men are required "not to teach green hands save by consent of the lodge members."[2] The Iron Molders' Union allows one apprentice to each shop, and one to every eight molders employed therein, but it is said that these regulations are not enforced.[3] Still it is apparent that there is, on the whole, a decided tendency towards the establishment of apprenticeship regulations.

Now these regulations are of great importance in connection with the relations between trusts and trade unions. It is obvious that a union of highly skilled workers, maintaining by its apprenticeship and immigration rules a close corporation, is in a position of such strategic importance that it can easily force from the trust some of its monopolistic profits. Such skilled workers have usually some money saved and are in a better position to hold out in the case of a strike than the average wage-worker. The trade union has been long organized and its members have a certain sense of solidarity. The trusts are in the formative period, and when a trust is just on the point of being launched, any mischance may ruin its prospects. In such a situation as has appeared in the cases of the glass trusts, the tin-plate trust and the wall-paper trust, the men may secure concessions which they could not have obtained from single or even from federated employers. The trust on its side is glad to see the trade union strong, because it will enforce on the independent producers a definite standard of wages, and so will prevent their gaining an economic advantage by lowering the price of labor. There may even be an understanding, express or tacit, that independent producers are not to be supplied with labor, and there is thus a fresh obstacle to the

[1] Industrial Commission, vol. 17, p. 123. There is, however, a considerable number of non-union shops, where more apprentices are taken. The president of the union assured the writer that throughout the trade the ratio of apprentices to journeymen was about one to three.

[2] *Ibid.*, vol. 7, p. 391.

[3] *Ibid.*, vol. 17, p. 238.

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entrance of competitors into the trade. The trust may in fact, by means of its alliance with the trade union, corner the available supply of skilled labor, and thus guard its position of monopoly by an additional fortification. The trade union will be specially inclined to favor the trust in trades where wages are determined by a sliding scale, provided there is openness and honesty in adjusting the scale; for in maintaining or raising prices, the trust will *ipso facto* maintain or raise the rate of wages. This appears to be the reason why the workmen looked with so much favor on the formation of the Pittsburg Coal Company[1] and of the tin-plate trust.[2]

V.

In regard to these alliances of laborers and capitalists views are held and forecasts attempted which to some extent run counter to those of the present writer, and which should be mentioned. The reader may have observed that the trusts forming alliances with the trade unions were, with the exception of the tin-plate trust, rather of the type of pool or cartell than completely unified trusts. They implied merely common selling agreements and a certain pooling of trade secrets; they did not involve a concentration of production in a few scientifically equipped establishments under a single management. And in fact the organ of the glass manufacturers refuses to admit that the combinations in the trade were of the nature of trusts, although they are so classed by the Industrial Commission. "The glass industry," it says, "is not

[1] *Ibid.*, vol. 13, p. 101.

[2] It would be an interesting inquiry whether in the case of such an alliance between a trust and a trade union, the union leaders would retain their objection to the system of profit sharing. So long as that system is adopted by one firm and not by another, the objection is intelligible, for it tends to break up that solidarity of class feeling which is the union's strength. But the situation appears to be decidedly modified when the union is not facing a group of more or less united employers, competing against one another, but is in alliance with a trust concentrating in itself by far the larger volume of business in that industry. Then the trade union might possibly be inclined to alter its views with regard to profit-sharing, stockholding by employees, or the provision of relief funds, hospitals, *etc.* by the capitalists.

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yet sufficiently developed to be an object of trustification."[1] It may perhaps be held that, while the power of consolidated capital will be friendly to trade unionism during the first period of combination, yet, when once consolidation has been achieved, capital will endeavor to shake itself free from the trammels imposed on it by organized labor. It has indeed been hinted that recent movements in the tin-plate industry may admit of this interpretation, and it appears that the alliance in the window-glass combination is on the point of breaking down.[2] Time only can show how far this view is true.

But while this form of alliance between trust and trade union frequently breaks down, it tends constantly to reappear; and we may at all events conclude that while it continues in existence the work people are well able to take care of themselves in their struggle with the power of capital. Our concern should rather be for the consumers who suffer from the raising of prices, and for the unskilled workers and would-be learners, who by restrictive regulations are shut out from participation in the profits earned by the monopolized industry. By such an alliance between trust and trade union the power to raise prices, or lower quality with impunity is greatly increased. It is always a hazardous thing to enter into competition with a trust; but the risk will be doubled when to the possibility of cut-throat lowering of prices is added difficulty in obtaining the necessary supply of skilled labor. Under such circumstances, if the labor monopoly can really be maintained, the force of potential competition will be greatly diminished. On the other hand, the severely restrictive regulations concerning apprenticeship are a real grievance to the mass of young men who are growing up and are desirous of learning a trade. We may agree with the unionists that in the interest of the learners themselves absolutely free entrance to a trade is not desirable. The worker spends some years in obtaining the necessary skill, and has a right to expect that when he emerges from his apprenticeship he will have a reasonable likelihood of making a living. But the proportion so often found of one apprentice

[1] *National Glass Budget*, Jan. 24, 1903.

[2] Owing rather to the sudden introduction of machinery than to the inherent weakness of the agreement.

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to ten journeymen is insufficient to maintain the trade at its existing level, much less to provide for its proper expansion.[1]

This alliance between capitalists and skilled workmen would introduce a new cleavage into society. Instead of the horizontal division so constantly in our minds in studying the economic literature of thirty years ago, it introduces a vertical cleavage. The whole of one industry becomes concentrated; the trade unions, the producers of raw material, the manufacturers, wholesalers and retailers are federated together in one vast combination standing face to face with the consumers. Entrance into this circle of monopoly and consequent high profits is at any stage impossible save with the consent of those already in possession. If this movement of alliance between trust and trade union continues, it may become necessary to add to the program of trust regulation which is slowly taking shape, another program for the regulation of trade unions, which, while not interfering with their proper function of enforcing on all employers a definite standard of wages, hours and conditions of labor, shall insist that every qualified person shall be admitted to membership in the union, and that apprenticeship rules, if these are needed, shall be so framed as to prevent the growth of a close corporation.

But what of the other group of trusts, those which are indifferent or hostile to organized labor? In all these cases, the labor employed is of a lower grade: it does not demand the training,

[1] See an article by C. P. Sanger on "The Fair Number of Apprentices in a Trade" (*Economic Journal*, 1895, p. 616), where the whole question is discussed on actuarial grounds. In only one case does Mr. Sanger believe that the ratio of nine journeymen to one apprentice would be reasonable, and then only on the supposition (which is much less likely to be true in America than in England) that the trade is stationary. This matter of apprenticeship rules is one which requires careful investigation, the results of which might have much practical importance, since the American unions are tending in the direction of greater strictness. One union — that of the stove founders — bases its rules on a scientific investigation somewhat similar to Mr. Sanger's; in other cases the proportion is fixed by guess-work only, and there does not appear on the surface any reason why one apprentice to twenty-five journeymen should be the proportion enforced in the Chicago clothing trades, while in other industries two apprentices are allowed to five journeymen. The question is further complicated by the facts that frequently the regulations hold for only a portion of the trade, the non-union shops employing as many apprentices as they please, and that sometimes a man is allowed to teach his eldest son without any restrictions.

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ability or moral character necessary for the work of glass blowers, machine printers, tin-plate workers or locomotive drivers. But unskilled labor implies a weak union; and a trust opposed by such a union knows that it can easily draw labor from other sources, and from its control of many establishments can put down a strike in one of them without any diminution of production, by a transference of business to other centres. This course was pursued by the American Smelting and Refining Company, when a strike occurred in one of its plants.[1] And if the already existing trust sees indications of organization among its workers, it is in a position to crush the nascent union far more promptly and energetically than can an independent producer. It can use the blacklist with greater certainty; its men, if discharged, have not the opportunity of finding work in the factory of another employer less hostile to unionism. In an industry where union among the men preceded amalgamation among the employers, the union is generally strong enough when such amalgamation is reached to insist on collective bargaining. This view with regard to railway labor is put very clearly in the final report of the Industrial Commission:

> It has been asserted that the interests of labor would be jeopardized by any attempt either at pooling or consolidation on the part of the railroads, by reason of the fact that such agreements often provided for an exchange of facilities as between roads in case of the outbreak of labor difficulties upon any one of them. . . . The extension of the great railroad brotherhoods *has so far antedated* the extension of railroad consolidation as to diminish greatly the importance of this consideration. A strike upon any line in the country is now likely to involve by sympathy all competing lines.[2]

But very different is the state of affairs when combination among the capitalists precedes organization among the workers. The trust is then in a position to "smash the unions" or prevent their growth; and motives for adopting this course will not be absent. Since in the trades which are still little organized, laborers are

[1] Industrial Commission, vol. 13, p. 98.

[2] *Ibid.*, vol. 19, p. 328. Italics not in original.

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comparatively unskilled and wages also are low, the employers will not desire to see the union strong, even for the sake of forcing their competitors into paying the same rate of wages. The cost of wages will be of little importance, and other methods for fighting the independents are at hand, more efficacious, if not so conducive to the welfare of society at large. Moreover new unions lack experience; they are tactless in their dealings with employers they frequently aim at restriction of output and manifest more or less hostility to machinery; they make absurd claims with regard to the choice of their own foremen, *etc.* The trust has therefore every ground for fighting them and it very generally does so. In the tobacco and anthracite coal industry[1] consolidation among the capitalists preceded organization among the men. Therefore both combinations are bitterly opposed to the union and use all their vast power to crush it. In both cases the union had to deal with a great mass of surplus labor ready to enter the industry, and therefore it has found the work of organization exceedingly difficult. In those industries, then, employing relatively unskilled labor, hostility to labor organization will almost invariably be manifested by the capitalists and their officials. The managers will refuse to treat with any outside representatives of their employees; they will practise individual bargaining; any man who is notoriously discontented and strives to infect others with his own dissatisfaction will run the risk of immediate dismissal. The growth of organization among the men will be hindered from the outset by the enormous power and uniform administration of the trust. A successful strike will be impossible unless it can be secretly organized on a scale large enough to close every one of the trust's plants at once, and unless also the supply of surplus labor can be kept out by a rigid picketing. It is only too probable that under these circumstances trade-union propaganda will be accompanied by its worst features of secrecy and terrorism. The situation will be peculiarly difficult, and the feeling unusually bitter, when the rise of the trust is coincident with the introduction of new machinery which can be worked by unskilled labor. In such a case there will exist not merely the difficulty of orga-

[1] As far as concerns the last twenty-five years.

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nizing a union of the fresh workers, but the union of the former skilled men, whose laboriously acquired technical skill has suddenly been rendered useless, will complicate the situation by its hostility at once to the combine and to the new unskilled worker. To some extent this is the situation to-day in the trade of cigar-making;[1] and a similar situation may develop, unless the union is skillfully guided, in the window-glass industry.

Now granting that in trust-controlled industries, where the labor employed is unskilled, the growth of unionism is likely to be checked, what is the probable effect on the condition of the laborer and on society generally? The laborer will be practically at the mercy of the combination. His wages can be reduced, his hours of work lengthened, his conditions of employment will steadily deteriorate and protest will be to him increasingly difficult. On the one hand his possible employers will become fewer, on the other, entrance into a skilled trade will become more difficult. The unskilled or little skilled laborer will be in a position of far greater dependence than he has ever known before; and, like all dependents, he will be subject to sudden outbursts of rage against his subordinate position and to the intoxication of power, should a slight success be achieved through combination with his fellows. Not improbably, therefore, in place of the slow growth of trade unionism, making steadily for conservatism and conciliation in dealing with employers, we shall see in this section of the labor world sudden and irrational outbursts, extravagant demands when a little success is gained, and a growing embitterment between laborers and capitalists.

VI.

It should be remembered, however, that in many respects the trust may be able to accord better treatment to its work people than the competing individual firm. When the first dismantling of superfluous factories and dismissal of workmen is at an end, there is assured to the employees one great blessing which can be obtained by no trade union methods at present known, *i.e.* continuity of employment. The combinations are relieved from the

[1] Probably also in watch-case engraving.

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pressure of competition and can therefore afford to pay better wages. Whether they do so or not is still a disputed point. Wages appear on the whole to have risen among the employees of all trusts, but it is not clear that the rise is greater than that in competitive branches of industry. A recent bulletin of the Department of Labor says:

> The only conclusion that can fairly be reached under the circumstances is that the combinations on the whole show the same tendency as the large private companies, and that so far as the figures go one cannot say that they have treated the laborer any less generously.[1]

Sanitary and other conditions are likely on the whole to be better under the trusts, for they operate as a rule new plants specially built and planned for the trade in question. An inquiry into the hours of work in concerns under the control of trusts would be interesting. One of their methods of making profit is to get as much out of their fixed capital as possible; and they will therefore tend to keep the machinery working for longer hours. In all probability, then, in the matter of hours and of suitable seasons for work, the trust employees will tend to be worse off than those in the service of private firms.

So far as can be ascertained, not even the trusts employing unskilled labor have thus far depressed the rate of wages, but it is too soon to conclude that they will never use their undoubted power to do so. Hitherto the trusts have on the whole been passing through a period of great prosperity, and have had no motive to recoup themselves for their losses out of the earnings of their employees. But they may not always maintain this benevolent attitude. In a time of trade depression, an over-capitalized concern will certainly endeavor to make its men share in its losses. A strong trade union might be able to prevent reduction of wages, for it could close the factories and cut off all production whatever; but in an industry where mainly unskilled labor is employed and where the trade union is weak or non-existent, the men will be able to make no resistance. Their wages will be reduced and their standard of life lowered; and it is doubtful whether, in the absence

[1] Bulletin of Department of Labor, July, 1900, p. 692.

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of organization, they will be able when good times come again, to recover the position they have lost.

VII.

The practical conclusion suggested by the facts presented — a conclusion sufficiently important both for the legislator and business man of to-day — is that the growth of trusts makes both possible and urgent a large extension of legislation dealing with labor. In the first section of the industrial field which we considered, the demand for legislation will come from the side of the consumers. The trade union, by its restrictive policy, will increase the monopolistic power of combinations of capital and will make entrance into a profitable field of employment difficult for the young man anxious to learn a trade. If the movement for incorporation of trade unions is carried further, or even if some system, short of incorporation and similar to the English method of registration, is adopted, it may be possible to establish supervision over the trade-union regulations — a supervision by which harmful and restrictive rules can be thrown out, while the trade unions are upheld in their proper work of establishing a definite standard of wages, hours and conditions, to which all factories must adhere. In the second section of industry subject to the trusts, trade unions should be strengthened, not weakened; for only thus can the workmen retain some measure of independence. Otherwise there will inevitably appear the "bondage to the job" and the consequent "feudalism" anticipated by a recent writer;[1] and we may hope, but can by no means be assured, that it will be "benevolent." As therefore, in the first section, supervision is needed by trade unions, so here a wise public opinion will watch the attitude of the corporations, considering in the first place whether it may not be necessary to guard against the victimizing of unionists, and urging in the second place that all corporations shall consent to treat with unions that include a majority of their work people.[2]

[1] J. W. Ghent, Our Benevolent Feudalism.

[2] The Anthracite Commission's awards ix and iv amount practically to these regulations.

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Moreover the community will be impelled, by the growth of trusts, to contemplate direct legislation concerning the conditions of employment. The unionists themselves, realizing in many trades their weakness as against the combinations of capital, will turn more and more to the collective powers of the state. They will agitate for the suppression of child labor, for the regulation of the labor of women, for prevention of blacklisting, for regulation of sanitary conditions and of the hours of labor. Such a movement will naturally be most evident among the weaker unions. Thus there is no stress laid on agitation for labor laws in the long established organizations in the metal and glass trades; but the unions of textile and tobacco workers display a distinctly socialistic trend.[1]

To sum up, then, we find that, in a section of the industrial world, the trade unions, by fixing a definite level of labor cost, make combination among the capitalists easier and are therefore made humble partners in the trusts; in some cases, by restricting the amount of available labor, they succeed in drawing a portion of the profits into their own pockets. But in industries where the labor is unskilled and the wages are low, if the trust appears before the trade union, then combination among the capitalists makes organization among the workers more difficult and lessens their power of resisting unwise or unjust demands.

In both cases the movement toward greater public interference with industry will be strengthened; but in the one case it will proceed from the consumer, in the other from the producer.

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NEWCASTLE-ON-TYNE.

[1] Industrial Commission, vol. 17, p. 77.

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STATE CENTRAL COMMITTEES.

A STUDY OF PARTY ORGANIZATION.

THE purpose of this sketch is to present a brief outline of the organization of the central or executive committees of the Republican and Democratic parties in the several states. The statements made are based in part on the written or printed rules of the several state organizations. Twenty-two of these organizations, twelve Republican and ten Democratic, publish manuals showing the structure of the party government in the state, and regulating in a more or less detailed way the powers and duties of the officers and sub-committees.[1] Where no such manuals are obtainable, the important facts have been supplied by the chairmen of the state committees on blank forms submitted to them for that purpose.[2] The principal points considered in this discussion are the basis of apportionment of membership on the state committee, the method of election, the term of office, vacancies and removals, officers and sub-committees, and the general powers of the central committee.

Apportionment of membership. — On examining the method of apportionment of membership on the committees, it appears that several different systems are in vogue. The various units on which representation is based are the congressional district, the county, the legislative district, representative or senatorial, the judicial district, and the town. There is also a mixed or composite basis. The prevailing practice is to use either the congressional district or the county as the unit of representation. Of the Republican organizations fifteen use the congressional district, and of the Democratic twelve, making a total of twenty-

[1] Republican: Connecticut, Indiana, Kentucky, Massachusetts, Ohio, Pennsylvania, Missouri, New Hampshire, Rhode Island, Tennessee, Virginia, West Virginia. Democratic: California, Colorado, Connecticut, Florida, Kentucky, North Carolina, Pennsylvania, Rhode Island, Vermont, Virginia.

[2] The Democratic organizations in Nebraska and Texas are omitted from this discussion, as no report has been obtained.

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seven. The county is the unit in sixteen Republican comittemes and in twenty of the Democratic, making in all thirty-six. Of the ninety organizations, then, sixty-three employ either the congressional district or the county as the unit of representation. The legislative district is the basis in fourteen committees, nine Republican and five Democratic. The judicial district is used in two cases and the town in a like number. In some cases a mixed system is found, combining several methods. Of these the most remarkable is that of the Idaho Democratic committee, in which one member is taken from each of the five judicial districts, two are taken from each of the twenty-one counties, seven are chosen at large, and three so-called "press members" are selected in addition. In the Arkansas Democratic committee there is one member for each judicial district, one for each assembly district, and twenty are chosen at large. The California Democratic committee is composed of two members from each congressional district, one from each assembly district, and twenty at large. In the Republican committee of the same state, one member is allotted to each assembly district, and twenty-one are appointed at large by the chairman of the state convention. In many of the organizations already considered and classified, a number of members are appointed at large. In the Louisiana Democratic committee, thirty-five are thus appointed; in the California Republican committee, twenty-one; in the Louisiana Republican committee, twenty; in the Arkansas Republican committee, fifteen.

Which of these various methods shall be employed is determined by geographical rather than party considerations. The county system is employed almost exclusively in the far West, and to a considerable extent in the Northeast and in the South. The congressional district is employed in all of the Central states, except in the Democratic committee of Minnesota; to a considerable extent in the South; but nowhere in the East, except in the Republican committee in New York. The legislative district system has no particular habitat, except that it is not found in the Central states. Otherwise it may be encountered in any section of the country, as for example in Massachusetts, in Pennsylvania, in West Virginia, in Texas, and in California.

The apportionment of members to these various units is based

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on geographical or territorial rather than numerical considerations. It is, in the main, not the party strength that is represented, but a given area or district. In some instances, however, recognition is given to the vote polled, although the principle is seldom fully carried out. In Nevada both organizations accord representation to each county in proportion to the party strength developed there. In the Democratic committees of Pennsylvania and Colorado each county is given one representative, and one additional member for every 10,000 votes cast for the Democratic candidate for President at the preceding election. In the Maryland Republican organization membership on the committee is given to Baltimore and the various counties in proportion to the number of representatives that each has in the legislature. In other cases, large and populous counties or cities are allowed additional although not proportional representation. Thus in the Delaware Republican committee each county has three members, except Wilmington, which has four. In the New Jersey Republican committee each county has one representative, but Essex and Hudson are given two each. In the Minnesota Democratic committee the three largest counties have two representatives instead of one. On the other hand, there are states in which the rights of the local area are very carefully guarded. In the Pennsylvania Republican committee, for example, each senatorial district is given two representatives, and if there are two counties in the district each must have one member. In the North Dakota Democratic committee each legislative district is allowed one representative, but, as in Pennsylvania, if there is more than one county in the district each of them is entitled to a member. In general, the system of representation follows that of the state legislatures in the strong emphasis placed on the local units. The logical basis of representation on the state committee is the party strength in the given unit; but the feeling that the localities must be recognized is in most cases stronger than the demands of abstract logic, and the weakest district obtains equal representation with the strongest.

The size of the committee varies greatly in the different states. The largest is the Maryland Republican committee, which contains 124 members. The Colorado Republican committee has

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114 members; the Louisiana Democratic, 111; the California Republican, 101; the New Hampshire Republican, 108. In the large Maryland committee membership is distributed among the localities in the same proportion as in the state legislature of that commonwealth. The Colorado committee is made up of two members for each of the fifty-seven counties of the state; that of Louisiana is based on a membership of two for each of the parishes and thirty-five at large; that of California is formed by allowing one member to each assembly district and adding to this the twenty-one members at large chosen by the state convention. Some of the committees, on the other hand, are comparatively small. Thus the Democratic and Republican committees of Virginia and of Iowa are each composed of only eleven members; and in many other states the committees are little larger.

Term of service. — The term of membership on the state committees varies from one to four years, but the most common period is two years. The one-year term prevails in both parties in Massachusetts, Rhode Island and Ohio, and also in the Pennsylvania Democratic organization. In West Virginia, Mississippi, Louisiana (both organizations) and in some other states, the term is four years. In New Jersey the term is three years in both parties, following the term of the governor of the state.

Method of election. — The election of members to the committee follows a general but not unvarying rule. In most cases the delegates to the state convention from the area to be represented, whether this be the congressional district, the county or some other area, choose their quota of members. For this purpose they caucus separately. The choice of the caucus is usually final, but in some cases the state convention has the right to reject the members selected. In some states, however, the members of the central committee are not selected in the state convention, but by the local authorities in the counties. Thus in the Republican organizations of New Jersey and Utah, and in the Democratic organizations of Pennsylvania and Washington, the members of the state committee are selected by the several county committees. In Utah the chairmen of the county committees are *ex officio* members of the state committee. In other cases each county convention chooses its state committeeman; so in the Republican organ-

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izations in Maryland and Utah and in the South Dakota Democratic organization. Still another method of selection is that employed in Florida, where, under the new primary law, the members of the central committee are chosen by direct vote of the party in the several districts. In Minnesota the members of the Republican state committee are selected by the chairman of the state convention on the nomination or suggestion of the candidates for state office in the ensuing campaign. In Tennessee, eight of the eighteen members of the Democratic state committee are appointed by the nominee for the office of governor. In states where the committee is partly composed of members at large, these members are selected by the state convention or by the chairman of the convention. A unique method of choosing the state committee is that provided for in the Wisconsin primary law, which is to be submitted to popular vote in 1904. Having abolished the state convention, the law proposes that, after the primaries, the party nominees for state office together with the candidates for the legislature shall meet and choose the state committee.[1] In Mississippi, where a state-wide direct primary law has been adopted, the state convention still assembles every four years, and at that time selects the state central committee.

Vacancies and removals. — Vacancies in the committee are in general filled by the remaining members. In a considerable number of states, however, there are exceptions to this rule. In states where the unit of representation is the county, the power to fill the vacancy is not infrequently lodged in the local committee; so in the Democratic organizations of Louisiana and Maine, and in the Republican organizations of Colorado, Maryland, New Jersey, Utah, Washington and Wyoming. In other cases the power to fill vacancies is vested in the executive committee of the state committee; and in some organizations the chairman of the state committee is empowered to fill the vacancy.[2]

The removal of members from the state committee seems not to be contemplated at all in some states. There is no provision

[1] These same persons, according to the provisions of this law, are also charged with the function of formulating the party platform.

[2] Democratic: New Hampshire, Massachusetts, Nevada, South Dakota. Republican: Montana, Minnesota, Rhode Island.

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for removal in the state constitution of the party and there is no record of any such case. The chairman of the Delaware Republican organization states, in reply to the question touching removal, that "ostracism" is the only method known to him; and from Iowa comes the answer: "making it so hot for him that he will resign." But in many states there is a well defined understanding as to the process by which a recalcitrant or disloyal member may be removed from the managing committee. In the Montana Democratic committee a unanimous vote is required for removal; in the Kansas Democratic committee and in the Mississippi Republican committee a two-thirds vote is necessary; in other states a mere majority is deemed sufficient. In the Republican organizations of Georgia and of Utah the county convention possesses the power of removal.

Officers and sub-committees. — The officers of a state committee are few in number. There is a chairman, a secretary, a treasurer, and sometimes, in addition to these, a vice-chairman and a sergeant-at-arms. These functionaries are generally elected by the committee itself; but they need not be, and frequently are not, members of the committee. In most of the organizations there are sub-committees, of which the most important is the executive or campaign committee. This is usually composed of from three to nine members and is the most active part of the state organization. Another important committee is that on finance, and in many state organizations there is a separate auditing committee. A speakers' bureau or literary bureau or both are frequently found. Of all the officers the chairman and the secretary of the whole committee are the most important. Indeed, the campaign in many cases is really placed in the hands of these two men.

Powers. — The powers of the state central committee are seldom clearly defined, either by the written or by the unwritten constitution of the party. It can scarcely be said to govern and guide the party in the formulation and execution of policies, for as a rule this is a matter altogether outside its jurisdiction. The informal steering or managing committee which really determines the policy of the party is likely to be another group of politicians, although the actual leaders of course control the state committee through their agents and are sometimes found there in person.

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The important powers and duties of a state committee, as of a national committee, center in the conduct of the campaign. Given the candidates and the platform, it is the function of the state committee to see that these particular persons and principles are endorsed by the voters of the state, or at least that the full party strength is polled for them. The state committee determines the time and place of the nominating convention, fixes the ratio of representation, and issues the call for the convention. It often makes up the temporary roll of the convention, suggests temporary officers of the convention, and in general assists in putting the machinery of the nominating body in operation. After the convention is over, the committee takes charge of the conduct of the campaign and exercises general supervision over its progress. The committee raises the funds necessary for the prosecution of the work and distributes them at its discretion. It prepares and sends out appropriate literature to strategic points within the state, and assigns speakers to places where it is supposed they will be most effective. In short, the state committee is the managing board entrusted with the conduct of the state campaign, and as such is expected to practise all the arts known to politicians to bring about the success of the party.

The adoption of the Australian ballot system has involved a legal recognition of the political party as sponsor for nominations to appear on the ballot under the party emblem or with the party name. The convention was declared the official representative of the party in the first instance, but it was found necessary to make further provision for vacancies caused by the death or disability of candidates for state office. The laws of most states accordingly authorize the state central committee of the party to fill vacancies occurring on the ticket.[1] In some of these laws this power is granted only in case there is not time to reconvene the convention; in others there is no such limitation. It is sometimes further provided that the substituted name must be that of a member of the party in question. Thus the Missouri statute reads: "No central committee shall have power to substitute, to fill any vacancy, the name of any person, who is not known to be of the

[1] Illinois Rev. Stat., sec. 296; Massachusetts Rev. Stat., ch. ii, sec. 152.

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same belief and party as the person for whom he is substituted." [1]

In the conduct of a campaign the state committee coöperates with the national committee, and to some extent with the congressional committee. It must also be constantly in touch with the local organizations of the state. On the nature of the relation between the state and the local authorities, the printed rules of the state organizations present many interesting facts. In some instances the authority of the central committee over the local committees is very great. In Colorado, the Democratic state committee has full power, except during the session of the state convention,

> to consider, pass upon and determine all controversies concerning the regularity of the organization of the party within and for any congressional district or county or city in the state of Colorado and also concerning the right to the use of the party name.[2]

Procedure in the case of contests is elaborately regulated, and full power is conferred on the committee to carry out its decrees. In Pennsylvania the Democratic state committee is empowered to examine the rules of party organizations, and to refuse representation in the state convention or the use of the party name unless the rules are such as to meet with its approval. The committee is empowered to "direct such changes as may appear necessary and expedient," and to refuse recognition of the local committee until such changes are made.[3] The rules of the Indiana Republican organization declare that the central committee has

> immediate and full control of the political affairs of the Republican party in the state, the management of its campaigns, the collection and disbursement of funds, the selection of speakers, the distribution of documents, and generally shall adopt such honorable and vigorous measures as may be necessary to insure the success of the Republican party and the election of its members.[4]

[1] Missouri Rev. Stat., sec. 7088.
[2] Rules, sec. 7.
[3] Rules, ii, sec. 3. *Cf.* the Democratic rules in Virginia and Kentucky.
[4] *Cf.* the Republican rules in Kentucky, art. 3, and in Missouri, sec. 4.

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Where the authority conferred on the central committee is not so extensive as in Colorado and Pennsylvania, the central organization is expected to watch over the local agents of the party, and to stimulate and encourage their activity in every possible way. Especially in localities where factional strife endangers the success of the party, it is the function of the state committee to act as a board of conciliation and arbitration and, if possible, bring about at least a temporary truce between the combatants. As the Missouri Court said in the case of State *v.* Leseur:

> It would seem inherently necessary in all party organizations that there should be some governing head, some controlling power, some common arbiter, which, if emergency should arise therefor, can lay its hands on the heads of the warring factions within the party and compel the observance of wholesome regulations, conducive alike to efficient party organization, order, fair dealing and good government.[1]

In another Missouri case, however, the interference of the state committee in local affairs was overruled by the supreme court of that state. In Jackson County there was a bitter factional fight between two wings of the Democratic party, and two conventions were held. Each convention nominated a set of candidates and each held that its nominees were the regular candidates of the Democratic party and entitled to appear as such on the official ballot. The state committee, after considering the case, decided that the proceedings were irregular in character and ordered a new convention. The case was carried to the supreme court, where it was held that one of the two sets of candidates was regularly nominated, and that the state committee had no authority to declare the nominations invalid without granting a hearing to both factions. The court said:

> Before a committee organized for the efficient management of party affairs of the state at large can set aside the action of a party acting under its own local government, it must first be shown that the local organization has either become disrupted and disorganized, or that the nominations for a particular election have been procured by fraud or in disregard of the usages and customs of the party; and it inevitably

[1] 15 S. W. Rep. 539 (1891).

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follows that the nominees of the local organization whose nominations are to be set aside shall be accorded a hearing and a time and place fixed for that hearing of which they shall have had reasonable notice, and an opportunity to present their evidence.[1]

In conclusion it may be said that the plans of organization here outlined are by no means rigid and inflexible in their nature. They are convenient methods of directing campaign work, but they may be altered or radically changed by the action of the state convention. Thus in Illinois, in 1900, when the nominee of the Republican party for governor failed to secure a majority of the state central committee, a resolution was introduced in the convention increasing the number of the committee by the addition of eight members at large. This motion was declared carried by the chairman of the convention, who proceeded to name eight members in the interest of the gubernatorial candidate. In any party emergency, or in the course of a fierce factional fight, the rules governing the organization of the central committee are likely to be overridden by the stronger or more cunning. To infer, however, from such instances of intervention on the part of state conventions, that the organization of a state central committee is a matter of slight importance, and that it makes little difference in whose hands the control rests, would be quite erroneous. To the ambitious aspirant for party authority the state central committee is a point of great strategic importance, and many a bitter fight has been waged for its control. The possession of the central committee is, if not conclusive, at least presumptive evidence of party authority and control — one of the external marks of sovereignty.

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[1] State *v.* Crittenden, 64 S. W. Rep. 162, at 169. In the case of Whipple *v.* Broad, 55 Pacific Rep. 172, the Colorado court held that the removal of Broad, the chairman of the Silver Republican state central committee, by C. A. Towne, provisional chairman of the national committee, was unauthorized and could not affect the party standing of Broad.

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AMERICAN MUNICIPAL COUNCILS.

CONSIDERING the amount of published discussion on municipal government in the United States, it is somewhat surprising that there should be a lack of definite information concerning the primary facts of municipal organization. Most of the literature, however, which deals with the structure of municipal government is devoted to advocacy of proposed changes; and references to existing conditions are either confessedly limited to a few cities, or are vague statements, often erroneous because made without the detailed investigation which must be the foundation of any safe generalization. Yet it would seem that the task of securing a satisfactory system of municipal organization would be aided by a comprehensive examination of existing methods; and that it would be worth while for students of this problem to understand with some degree of exactness what are the leading practices and prevailing tendencies of the time.

It is in this belief, and as a first step in this direction, that this paper has been prepared. Much of the information has been secured by a series of inquiries addressed to the cities which, according to the census of 1900, have a population of more than 25,000. The facts thus collected have been supplemented by other data from various sources. The study deals for the most part with the structural organization of municipal councils. Some remarks are added in reference to the general character of the powers conferred on these bodies; but there is no attempt to analyze the minutely enumerated "powers" — which are in fact rather limitations — which form so large a part of most municipal charters.

Number of chambers.— In the early days American city councils were always single bodies, like the town councils in England after which they were modelled. During the nineteenth century the bicameral system was introduced in many cities, sometimes in imitation of the bicameral state legislatures and the federal Congress, but in Massachusetts as a development from the town meeting

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government. At one time or another most of the large cities have had a bicameral council; and, while many of them have returned to the single-house system, two councils are still found in Philadelphia, St. Louis, Boston, Baltimore, Buffalo and Pittsburg — one-half of the cities with over 300,000 population. Apart from the large cities, the bicameral system is now almost confined to New England, Pennsylvania, Virginia and Kentucky; but there are a few other sporadic cases, as in St. Paul, Atlanta, Wheeling, Mobile and Chattanooga. In the United States as a whole, about one third of the cities of over 25,000 population have the bicameral system. In the smaller cities the proportion is less: in 1892, out of 376 cities with over 8,000 inhabitants, only 82 had a bicameral council. The single-chamber council, which has always been the more prevalent form,[1] is found, among the large cities, in New York, Chicago, Cleveland, Cincinnati, San Francisco, New Orleans, Detroit and Milwaukee.

In some cities which have nominally only a single council there is another body, which, although ostensibly only an executive authority, has some resemblance to a second branch of the council. Such bodies are the boards of estimates in New York City and in the four cities of the second class in New York State, and the boards of public service in Ohio cities.

Number of members. — In this respect there is naturally a wide difference between large and small cities; but there is seldom any definite relation between the size of a city and the size of its council. For the most part the councils are smaller than in European cities. Philadelphia, with 41 members in the select council and 149 in the common council, has by far the largest membership. Next to this come Boston with 88 members in two councils, New York with 79 members, and Chicago with 70, in a single chamber. There are few other cities with more than forty members, and by far the larger number have less than thirty. In New England cities the councils are usually larger in proportion to the population than in other parts of the country. Some cities

[1] Mr. Bryce's statement (American Commonwealth, ch. 50) that the bicameral system is the more common must have been based on limited investigation, confined to the larger cities of the Eastern states.

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have strikingly small councils. San Francisco has only eighteen members, New Orleans only seventeen, and the cities of Iowa from six to ten. In Memphis the council consists of the board of fire and police commissioners and the board of public works, meeting as one body of eleven members. In Galveston the powers of a council are exercised by a board of four commissioners, two of whom are elected and two appointed by the governor of the state.

Term of service. — The term of service in municipal councils varies from one to four years in different cities; but the prevailing period is clearly two years. In New England annual elections for the whole membership of the council are still almost universal. Elsewhere biennial terms are to be found with few exceptions; but in many places one-half of the members are chosen each alternate year, so that there is a municipal election every year. The most important instances of longer terms may be noted. In Philadelphia, while the members of the common council serve for two years, those in the select council are chosen for three years. So too in St. Louis and Buffalo, while the larger chambers of the councils have a two-year term, the members of the smaller chambers are elected for four years. A three-year term is also found in Mobile for both branches of the council; and a four-year term in Memphis, Evansville, Charleston, Birmingham, Sacramento and La Crosse.

These short terms for members of city councils are not offset by any strong tendency to continuous re-election; and, as a result of the almost complete changes which take place, generally within two years, there is little opportunity for members of the councils to acquire experience in municipal affairs. Specific information about the length of service is difficult to obtain; but the following data for a few cities will illustrate the general statement. From 1836 to 1900 there had been in Newark, New Jersey, a total of 569 aldermen. Of these 342, about 60 per cent, had held the position for two years or less; 49 had served for three years, and 117 for four years. Only 61, or a little over ten per cent, had served for more than four years; and 40 of these had only one or two years additional. Of the remaining 21, 17 were aldermen from seven to ten years; and the four holding records for longest service

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held the positions for 13, 14, 16 and 22 years respectively.[1] The St. Louis house of delegates for 1899–1901 had among its 28 members but eight who had served in the previous house, and only two who had a longer term of service. One of these two, however, had been a member of the house for 14 years.[2] The Cincinnati board of legislation in 1900, out of 31 members, had four who were also on the board in 1895. The Cleveland council of 1901–02 had not a single member who was on the council in 1895.

The Chicago council in recent years shows a larger proportion of re-elections. Of the 35 members whose terms expired in the spring of 1902, 22 (nearly two-thirds) were re-elected and have now completed their fourth year, at least, of service. Seven have served for six years, four for eight years, and one member has been in the council for 14 years. At the council election in Detroit in 1901, seven of the 17 members chosen were re-elected.

Mode of election. — Members are for the most part chosen by wards or districts. This system is almost universal for single-chambered councils and for the larger house in bicameral councils. Most often each district chooses one or two members. The number of cities having one member from each district and the number having two are nearly the same; but in the large cities the one-member district is more general, this plan being followed in New York, St. Louis, Baltimore, Buffalo, Cleveland and Cincinnati, while the two-member plan is followed in Chicago and Detroit. Boston and many other New England cities have three members from each ward; while a few cities in New England and Pennsylvania (Philadelphia, Pittsburg and Allegheny) have a variable number — presumably in proportion to the population of the various districts.

It has often been urged that this district system constitutes one of the main factors in the election of inferior and dishonest members of municipal councils. It is contended that at best it lends itself to the election of members who will pay more attention to the needs of their district than to the larger interests of the city as

[1] Compiled from Common Council Manual for Newark, 1900, pp. 148–155.
[2] Municipal Code of St. Louis, 1900, pp. 1011–1026.

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a whole; and that the concentration of the worst elements of the city's population in some wards makes inevitable the election of a number of very objectionable members. Moreover the ward lines seldom mark off any natural divisions of the city, with a developed local sentiment and opinion; and the making and changing of ward boundaries lends itself to artificial gerrymandering for partisan purposes. Even without deliberate gerrymandering, it is quite possible, under the district system, for a minority of the voters to elect a majority of the council; or for a comparatively small majority to elect practically the whole council.

In rapidly growing cities other difficulties are introduced. The increase in population is not spread uniformly over the whole city, but is concentrated in certain districts, while at the same time there is a decrease of residents in the business sections; and it is thus almost impossible, if the prevailing system of equal representation in each ward is maintained, to adhere even approximately to the theory of representation in proportion to population. The subjoined table demonstrates this inequality for a number of the larger cities;[1] and similar if less striking figures might be given for the smaller cities. It is, moreover, of special significance that, in the largest cities at least, the districts with relatively small and

[1] MUNICIPAL WARD AND DISTRICT POPULATIONS, 1900.

	MOST POPULOUS DISTRICT	LEAST POPULOUS DISTRICT	AVERAGE DISTRICT POPULATION	NO. DISTRICTS	NO. 20% OVER AVERAGE	NO. 20% UNDER AVERAGE
New York*	122,395	25,959	60,000	35	10	14
Chicago	106,124	11,795	49,000	35	10	17
Philadelphia	65,372	6,953	32,000	41	14	17
Boston	32,566	12,840	22,000	25	5	3
St. Louis	27,998	12,212	20,000	28	5	3
Baltimore	24,117	19,201	21,000	24	0	0
Cleveland	60,504	17,679	34,700	11	4	4
Buffalo	29,414	6,488	14,000	25	6	13
San Francisco	27,836	12,797	19,000	18	4	2
Cincinnati	15,995	3,763	10,000	31	11	6
Pittsburg	22,669	660	8,500	38	12	20
New Orleans	31,663	4,484	17,000	17	6	5
Detroit	28,281	9,313	17,000	17	2	3
Milwaukee	21,903	5,418	13,500	21	8	6

* Manhattan and Bronx.

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decreasing population, which thus have an excessive representation in the councils, are often districts where the worst elements of the population are to be found. If the districts were of equal area, the congestion in the slum districts would give the opposite effect; but the small area of the slum wards, and the tendency of population there to decrease as the business sections develop, bring about this over-representation of such wards. Thus in New York the Battery district is the smallest; and in Chicago, before the recent re-districting, the first ward was one of the smallest.

Some exceptions to the prevailing system of district representation should be noted. Where the single-chamber council exists, the most general of these exceptions is the election, in addition to the ward representatives, of a small number of members from the city at large. This plan is followed regularly in Indiana and Iowa, has been adopted in the new Ohio code, and is found in a few other sporadic cases.[1] In a few cases all of the members are elected at large, as in the board of supervisors which takes the place of the council in San Francisco, and the boards which act as the council in Memphis. More frequently, the smaller body in a bicameral council is elected from the whole city instead of by wards; indeed, for these bodies the general ticket system is almost as common as the district system. This general ticket system is followed in St. Louis, Buffalo, Louisville, St. Paul, and commonly in Massachusetts and Kentucky. But in Boston the aldermen have been chosen by districts; and in the Pennsylvania cities select councils are elected by wards, each ward having one member in these bodies, irrespective of population, while in the common councils the representation of wards is apportioned on the basis of population.

Minority representation.— Under a general ticket system of voting one party is almost certain to elect all of the members chosen at one election, and a large minority of voters — or even a majority, if the election is decided by a plurality — may have no representation in the council. To obviate such a result, various schemes of voting have been devised; and several of them have been put

[1] San Antonio, Dallas, and Montgomery.

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in operation, but only in a few places, and usually to be abandoned after a few years. In New York City an elected board of ten governors for the almshouse was established in 1849, two to be chosen each year. Each voter had but one vote and the two candidates who received the largest number of votes were elected. In 1857 a board of supervisors for New York County was established to be chosen on a similar plan. Each voter could vote for but six of the twelve members to be chosen; the six candidates receiving the largest vote were declared elected, and the six candidates next in the order of their vote were to be appointed by the board. These methods gave the principal minority party equal representation with the party casting the largest vote. A slightly different method was followed for the New York board of education in 1869, when there were seven elected members and five appointed from the candidates next in number of votes to those elected. From 1873 to 1882 a similar system of minority representation was in operation in New York City for the election of the municipal council. Six aldermen were chosen at large, but no elector could vote for more than four; the remainder were elected in five districts, each choosing three members, but no elector could vote for more than two.[1] Some time after these experiments had been abandoned in New York, the same principle of limited voting was applied in Boston, in 1893, for the board of aldermen — the smaller branch of the city council. The twelve aldermen were elected at large; but no elector could vote for more than seven. After a few years this arrangement was abandoned, but a somewhat similar plan went into operation in the fall of 1903. A slightly different plan, which secures much the same results, is now in operation for the election of the board of sanitary trustees in Chicago. Each voter has nine votes — the same number as the number of members on the board — and these

[1] POLITICAL SCIENCE QUARTERLY, xiv, 691. Under this system not only were a considerable number of Republican members elected, but the different factions of the Democratic party were also represented. The change to the single-member system was made without discussion or popular demand, and there seems reason to think that it was made in the interest of uniting the Democratic factions under one control. It is perhaps significant that within two years after the system of minority representation was abandoned a board of aldermen was elected which became notorious for the bribery of its members.

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votes may be given one to each of nine candidates, or they may be distributed among not less than five candidates.

These plans of limited voting ensure a certain kind of minority representation; and some of the earlier plans gave a larger representation to minorities than they could justly claim on the principle of majority rule. All of these devices are open to serious objections. On the one hand, the courts have held, in some states, that where an elector is not permitted to vote for the full number of persons to be elected, he is deprived of his constitutional rights. On the other hand, these plans have been criticised from the point of view of public policy. Resting as they do on the assumption that the voters are permanently divided into two organized parties, they tend to promote the conduct and control of municipal elections by the national party organizations. This reduces the influence of independent voters. Even where such voters hold the balance of power, they can control the election only of one or two members; and in most cases a nomination by either of the principal parties has proved to be almost equivalent to an election.

Other plans of minority and proportional representation have been proposed and discussed; but none except those described above have as yet been put in operation in municipal elections in this country. Among the plans proposed is that of cumulative voting, which has been employed with considerable satisfaction in Illinois since 1870, for electing members of the State House of Representatives.[1]

Compensation. — Some financial compensation or salary is paid to members of municipal councils in nearly all of the large cities, and in the majority of the smaller cities. The largest salary, $2,000 a year, is paid to the New York aldermen. The members of the Chicago council and of the Boston board of aldermen have each $1,500. The annual stipend is $1,200 in San Francisco, Detroit and Los Angeles; and $1,000 in Baltimore, Buffalo and Denver. In other cities the amount is usually between $200 and $400, or,

[1] Cumulative voting has been held to be unconstitutional in Michigan (84 Michigan, 228); and probably in most states an amendment to the state constitution would be necessary before it could be legally established.

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in smaller places, from $2 to $5 per meeting. Even in the St. Louis assembly and in the Boston common council the members receive only $300 a year. Where the compensation is a fixed amount per meeting the payment is often dependent upon attendance; and in other cases there is a reduction in salary or a fine imposed for absence. In some cases the president of the council receives a larger salary than the other members; and in New York City this official is paid $5,000 a year.

In many cities, however, the older rule of no salaries to members of municipal councils is still followed. This is almost the universal rule in New England (except in Boston) and in Pennsylvania; it obtains frequently in New Jersey and in the Southern states, and occasionally in other states.[1] The largest cities where no salaries are paid are Philadelphia, Pittsburg, Newark, Jersey City and Louisville.

Social standing of councillors. — The inferior standing and character of persons elected to large American city councils has been a frequent subject of remark, but there have been few attempts to study this point in detail. In 1895 Mayor Matthews, of Boston, collected some definite facts on this point for the city of Boston. He presented statistics showing that, during the first fifty years after the creation of the city government in 1822, from 85 to 95 per cent of the members of the council were owners of property assessed for taxation; but that after 1875 the proportion had rapidly declined, and in 1895 less than 30 per cent of the council members were property owners. Not only had the percentage of property owners declined, but the total assessed value of property owned by council members, which had been $986,400 in 1822, and $2,300,400 in 1875, had fallen to $372,000 in 1894. Mr. Matthews' statistics are reproduced in the table on the following page.

Meetings. — Regular meetings of councils in large American cities are usually held on a fixed evening in each week; in less important cities, including, however, such places as Milwaukee and Toledo, once a fortnight; and in the smaller cities often not

[1] In the states of the Middle West the only instance among cities of over 25,000 appears to be Oshkosh, Wisconsin.

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PROPERTY INTERESTS OF MEMBERS OF THE BOSTON CITY COUNCIL.[1]

BOARD OF ALDERMEN.

YEAR	NO. OF MEMBERS	NO. ASSESSED	PER CENT OF MEMBERS ASSESSED	AMOUNTS ASSESSED TO MEMBERS	TOTAL ASSESSED VALUATION OF CITY	PERCENTAGE OF TOTAL VALUATION ASSESSED TO MEMBERS
1822	8	8	100.00	$146,100	$42,140,200	.00347
1830	8	8	100.00	99,400	59,586,000	.00167
1840	8	8	100.00	168,800	94,581,600	.00178
1850	8	8	100.00	261,800	180,000,500	.00145
1860	12	12	100.00	622,900	276,861,000	.00225
1870	12	12	100.00	476,200	584,089,400	.00081
1875	12	12	100.00	769,600	793,961,895	.00097
1880	13	11	84.61	197,900	639,462,495	.00031
1885	12	7	58.33	457,900	685,579,072	.00067
1890	12	8	66.66	206,200	822,041,800	.00025
1895	12	9	75.00	105,500	928,109,042	.00013

COMMON COUNCIL.

1822	48	45	93.75	840,300	42,140,200	.01994
1830	49	38	77.55	228,300	59,586,000	.00383
1840	48	40	83.33	204,400	94,581,600	.00216
1850	48	36	75.00	225,850	180,000,500	.00125
1860	48	41	85.41	1,116,400	276,861,000	.00403
1870	64	56	87.50	1,050,900	584,089,400	.00180
1875	74	61	82.43	1,530,800	793,961,895	.00192
1880	75	42	56.00	667,000	639,462,495	.00143
1885	72	29	40.55	290,300	685,579,072	.00042
1890	73	20	27.39	315,700	822,041,800	.00038
1895	75	16	20.33	266,500	928,109,042	.00029

more than once a month. In small cities and also in some important cities, as Chicago, Providence and Grand Rapids, the mayor presides; but in most large cities there is usually a president of the council, sometimes chosen by the council, sometimes elected as a councilman for the whole city.

Committees. — As in Congress and the state legislatures, much of the effective work of municipal councils is performed by standing committees. In most large cities there are from fifteen to twenty-five regular committees, appointed to different branches of municipal administration. Some cities with bicameral councils provide for joint committees of the two chambers, and in this way reduce the chances for a deadlock. The number of committees

[1] N. Matthews, City Government of Boston, p. 171.

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and the subjects referred to each vary from time to time in each city.[1] These committees have normally from three to seven members. They hold meetings at irregular intervals, according to the business before them. In small cities they have often direct supervision over the technical agents and the employees of the city in their respective branches of administration; and often, while special administrative officers or boards have been created for some department in a given city, other departments remain under the immediate control of council committees.

Powers. — It would serve little purpose to examine the host of detailed powers granted to city councils under the system of special legislation, enumerated powers and strict construction which prevails in all of the states. But a few remarks may be made about each of the two primary divisions, into which these powers may be classified: the control over administrative officers, and the power of enacting ordinances.

Control over administration. — While both Congress and the state legislatures have and exercise large powers in the creation of administrative offices, municipal councils in most states have very limited powers in this direction. The general situation on this point has been well summarized by Judge Dillon:

> The charter or constitution of the corporation usually provides with care as to all the principal officers, such as mayor, aldermen, marshal, clerk, treasurer, and the like, and prescribes their general duties. This leaves but little necessity or room for the exercise of any implied power to create other offices and appoint other officers. It is supposed, however, when not in contravention of the charter, that municipal corporations may to a limited extent have as incidental to express powers the right to create certain minor offices of a ministerial or executive nature. Thus, if power be conferred to provide for the health of the inhabitants, this would give the corporation the right to pass ordinances to secure this end, and the execution of such ordinance might be committed to a health officer, although no such officer be specifically named in

[1] Detroit has at present the following list: Ways and means, claims and accounts, judiciary, franchises, grade separation, streets, fire limits, house of correction, public buildings, sewers, taxes, street openings, printing, markets, public lighting, parks and boulevards, ordinances, pounds, health, licenses, city hospitals, liquor bonds, rules, charter and city legislation, and bridges.

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the organic act, if this course would not conflict with any of its provisions. But the power to create offices even of this character would be limited to such as the nature of the duties devolved by charter or statute on the corporation naturally and reasonably require.[1]

The general law governing municipal corporations in Illinois gives the city councils in that state a much larger field for the creation of local offices than is usually possessed. This statute provides only for a city council, mayor, clerk, attorney and treasurer, and then authorizes the council by a two-thirds vote to establish such other offices as it deems necessary and to discontinue any of these offices by a like vote. In the words of the statute:

The city council may in its discretion, from time to time, by ordinance passed by a vote of two-thirds of all the aldermen elected, provide for the election by the legal voters of the city or the appointment by the mayor with the approval of the city council of a city collector, a city marshal, a city superintendent of streets, a corporation counsel, a city comptroller, or any or either of them, and *such other officers* as may by said council be deemed necessary or expedient. The city council may by a like vote, by ordinance or resolution, to take effect at the end of their fiscal year, discontinue any office so created and devolve the duties thereof on any other officer.[2]

In many cities the councils retain a considerable power of appointment to municipal offices. The position of city clerk is more frequently filled by council appointment than in any other way.[3] Less frequently the councils elect to other offices, and sometimes fill all important positions. This large appointing power is found in Minneapolis, Providence, generally in New England (except Boston and Connecticut cities) and Pennsylvania (except the four largest cities) and in some smaller cities, as St. Joseph, Birming-

[1] Dillon, Municipal Corporations, § 207.

[2] Revised Statutes of Illinois, 1899, ch. 24, § 73.

[3] The council does not select this officer in Chicago, St. Louis, San Francisco, Detroit or Indianapolis, nor geerally in the cities of Illinois, Indiana, Michigan, Wisconsin, Kentucky or Missouri.

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ham, Montgomery and Fort Worth. More often, however, offices other than that of city clerk are filled by election, or by the nomination of the mayor, subject to confirmation of the council. In some cities this power of the council to confirm is used by individual members of the council to dictate nominations; but in other cities, as in Chicago and Cleveland, the mayor's nominations are regularly confirmed. In a number of larger cities even the power of confirmation has been taken away; but this development might more properly be noted in a study of the powers of the mayor.

The council has nearly always the right to receive reports from the various municipal departments, and to investigate the work of the departments by means of its committees. The control exercised in this way is made effective by the power of the council over the finances, and especially by its authority over appropriations. It has often happened, however, that this power has been used not to limit but to increase the expenditures, and in such a way as to help the aldermen's political prospects rather than for the best interests of the city. In consequence of this, in some important cities the financial powers of the councils have been very materially limited. In the principal cities of New York State the councils cannot increase the appropriations above the sums placed in the budget by the board of estimates —a device similar to that followed voluntarily by the British House of Commons. In Chicago, on the other hand, the finance committee of the city council has a large influence in determining the appropriations.

Ordinance power. — Judicial decisions have laid down certain general principles which govern and limit the ordinance power of municipal councils. Municipal ordinances must be reasonable and lawful; they must not be oppressive in character; they must be impartial, fair and general in their application; and they must be consistent with the public policy of the state as declared in general legislation.

The output of city ordinances generally varies with the size of the city; and in the large cities the enormous total is far beyond the power of any individual to comprehend. The New York ordinances make a comparatively small volume of 250 pages; but this

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is because so much that elsewhere is done by council ordinance is done for New York by legislative enactments and is found in the 900 pages of the city charter, while many ordinances are established by the police, health and other administrative departments. The Chicago ordinances are in two thick volumes of 1,000 pages each; those of St. Louis cover more than 500 large pages of fine print; small cities usually have all their ordinances in a pamphlet of perhaps not more than 100 pages.

In most cases this mass of municipal law is printed without any attempt at systematic classification. A frequent method is to arrange the ordinances by subjects, in alphabetical order. The city of Nashville, however, commendably publishes its ordinances according to a definite system which groups together those covering related subjects. The first part presents the ordinances relating to the election and appointment of municipal officers. The second part gives the ordinances governing the duties of the various municipal departments. The third part has the police regulations affecting the general public, in two divisions: one containing the ordinances to secure order, decency and good morals; the other, the ordinances for public convenience and safety. The fourth part includes the ordinances on financial affairs, including the permanent tax laws, the annual budget, and ordinances providing for bond issues. The fifth part gives the municipal and ward boundaries. In an appendix are collected the grants and franchises to railroads, lighting plants, telegraph and telephone companies, and other special privileges.

Statistics. — In the following pages tabulated statistics are presented, showing the organization of the municipal councils in nearly all the American cities which, according to the census of 1900, had a population of 25,000 or more.

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STATISTICS OF AMERICAN CITY COUNCILS, 1903.

	Single or Larger House				Smaller House			
	No. of members	How chosen (1)	Term	Salary (2)	No. of members	How chosen (1)	Term	Salary (2)
New York	79	73 + 6	2	$2,000				
Chicago	70	2 × 35	2	1,500				
Philadelphia	149	n × 41	2	none	41	1×413		none
St. Louis	28	1 × 28	2	300	13	A.L.	4	$300
Boston	75	3 × 25	1	300	13	A.L.	2	1,500
Baltimore	24	1 × 24	2	1,000	8		2	1,000
Cleveland	33	27 + 6	2	600				
Buffalo	25	1 × 25	2	1,000	9	A.L.	4	1,000
San Francisco	18	A. L.	2	1,200				
Cincinnati	32	26 + 6	2	1,200				
New Orleans	17	1 × 17	4	240				
Pittsburg	51	n × 38	2	none	38	1 × 38	4	none
Detroit	34	2 × 17	2	1,200				
Milwaukee	46	2 × 23	2	400				
Washington [3]								
Newark	30	2 × 15	2					
Jersey City	25	2 × 12	2	none				
Louisville	24	2 × 12	2		12	A. L.	2	
Minneapolis	26	2 × 13	4	500				
Providence [4]	40	4 × 10	1	300	10	×	1	500
Indianapolis	21	15 + 6	5	150				
Kansas City	14	1 × 14	2	300	14	A. L.	4	300
St. Paul	11	1 × 11	2	100	9	A. L.	2	100
Rochester	20	1 × 20	2					
Denver	16	1 × 16	2	1,000				
Toledo	16	13 + 3	2					
Allegheny	40	n × 15	2	none	15		4	none
Columbus, O.	15	12 + 3	2	442				
Worcester	24	3 × 8	1	none	9		2	none
Syracuse	19	1 × 19	2	200				
New Haven	45	3 × 15	2		30		2	
Paterson	22	× 8	2	400				
Fall River	27	18 + 9	2					
St. Joseph	15	2 × 7	2	200	9		2	200
Omaha	9		3	900				
Los Angeles	9	1 × 9	2	1,200				
Memphis [5]	11	A. L.	4	120				
Scranton		× 21						
Lowell	27	3 × 9	1	none	9	A.L.	1	none
Albany	19	1 × 19	2	500				
Cambridge	22	2 × 11	1		11	A. L.	1	
Portland, Or.	11	1 × 11	2	none				
Atlanta	14	2 × 7	2	300	7	1 × 7	3	300
Grand Rapids	24	2 × 12	2	350				
Dayton	13	10 + 3	2	350				
Richmond	35	n × 6	2		21		2	
Nashville	20	1 × 20	2	5(6)				
Seattle	13	9 + 4	3-4	900				

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STATISTICS OF AMERICAN CITY COUNCILS. (*Continued.*)

	Single or Larger House				Smaller House			
	No. of members	How chosen (1)	Term	Salary (2)	No. of members	How chosen (1)	Term	Salary (2)
Hartford	40	4 × 10	1	none	20	×	2	none
Reading	16	1 × 16	2	none				
Wilmington, Del.	13		2	$240				
Camden, N.J.	25	2 × 12	2					
Trenton, N.J.	28	2 × 14	2					
Bridgeport, Conn.	24	1 × 24	2	none				
Lynn, Mass.	25	n × 7	1		11	A. L.	1	$300
Oakland, Cal.	11	?	2	480				
Lawrence, Mass.	18	3 × 6	1	none	6	1 × 6	1	none
New Bedford, Mass.	24	4 × 6	1	none	6		1	100
Des Moines, Ia.	9	7 + 2	2	250				
Springfield, Mass.	18	n × 8	2		8		2	
Somerville, Mass.	14	2 × 7	1	none	7		1	none
Troy, N.Y.	17	1 × 17	2					
Hoboken, N.J	10	2 × 5	2	400				
Evansville, Ind.	11	7 + 4	4	150				
Manchester, N.H.	30	3 × 10	2	none	10	×	2	3(6)
Utica, N.Y.	15	1 × 15	2	300				
Peoria, Ill.	14	2 × 7	2	3(6)				
Charleston, S.C.	24	12 + 12	4					
Savannah, Ga.	12	A. L.	2	none				
Salt Lake City	15	3 × 5	2	420				
San Antonio, Tex.	12	8 + 4	2	5(6)				
Duluth, Minn.	16	2 × 8	2	300				
Erie, Pa.	12	2 × 6						
Elizabeth, N.J.	24	2 × 12	2	1				
Wilkesbarre, Pa.	16	1 × 16	2					
Kansas City, Kan.								
Harrisburg, Pa.			2	none				
Portland, Me.	27	3 × 9	1		9	×	1	
Yonkers, N.Y.	14	2 × 7		500				
Norfolk, Va.								
Waterbury, Conn.	15	3 × 5	2	none				
Holyoke, Mass.	21	7 + 14						
Fort Wayne, Ind.	20	2 × 10	2	150				
Youngstown, O.	10	7 + 3	2	150				
Houston, Tex.	12	A. L.		5(6)				
Covington, Ky.								
Akron, O.	10	7 + 3						
Dallas, Tex.	12	8 + 4	2	120				
Saginaw, Mich.	20	1 × 20	2	2(6)				
Lancaster, Pa.	27	3 × 9	1		?			
Lincoln, Neb.		× 7	2	300				
Brockton, Mass.	21	3 × 7	1		7	1 × 7	1	
Binghamton, N.Y.	13	1 × 13	2	300				
Augusta, Ga.	15	3 × 5	3	150				
Pawtucket, R.I.[4]	18	n × 5	1	100	6	5 + 1	1	150
Altoona, Pa.								
Wheeling, W. Va.	28	n × 8	2	none	16	2 × 8	4	none

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STATISTICS OF AMERICAN CITY COUNCILS. (*Continued.*)

	Single or Larger House				Smaller House			
	No. of members	How chosen (1)	Term	Salary (2)	No. of members	How chosen (1)	Term	Salary (2)
Mobile, Ala.	8	1 × 8	3	none	7	A. L.	3	none
Birmingham, Ala.	18	2 × 9	4	none				
Little Rock, Ark.	16	2 × 8	2	$120				
Springfield, O.	9	6 + 3						
Galveston, Tex.	4	A. L.	2	500				
Tacoma, Wash.	16	2 × 8	2	300				
Haverhill, Mass.	14	2 × 7	1	none	7		1	none
Spokane, Wash.								
Terre Haute, Ind.	9	6 + 3	2	150				
Dubuque, Ia.	7	5 + 2	2	300				
Quincy, Ill.	14	2 × 7	2	156				
South Bend, Ind.	10	7 + 3	2	150				
Salem, Mass.	24	4 × 6	1	none				
Johnstown, Pa.	21	1 × 21	2		21	1 × 21	4	
Elmira, N.Y.	24	2 × 12	2	100				
Allentown, Pa.	22	2 × 11						
Davenport, Ia.	8	6 + 2	2	300				
McKeesport, Pa.	22	2 × 11	2	none	11	1 × 11	2	none
Springfield, Ill.	14	2 × 7	2	156				
Chelsea, Mass.	15	5 + 10	1–2					
Chester, Pa.	22	2 × 11	2	none				
York, Pa.								
Malden, Mass.	21	3 × 7	1		7	1 × 7	1	
Topeka, Kan.		× 6	2	200				
Newton, Mass.	21	14 × 7	1–2					
Sioux City, Ia.	10	8 × 2	2	200				
Bayonne, N.J.	11	10 + 1	2					
Knoxville, Tenn.		× 11						
Chattanooga, Tenn.	12	A. L.	2	100	8	1 × 8	2	$75
Schenectady, N.Y.	22		2	75				
Fitchburg, Mass.	18	3 × 6	1		6		1	
Superior, Wis.	20	2 × 10	2	300				
Rockford, Ill.	14	2 × 7	2	3(6)				
Taunton, Mass.	24	3 × 8	1	none	8	1 × 8	1	none
Canton, O.	9	6 + 3	2	?				
Butte, Mont.	16	2 × 8	2	300				
Montgomery, Ala.	15	12 + 3	2					
Auburn, N.Y.	10	1 × 10	2	none				
East St. Louis, Ill.	14	2 × 7	2	3(6)				
Joliet, Ill.	14	2 × 7	2	3(6)				
Sacramento, Cal.	9	1 × 9	4	250				
Racine, Wis.	14	2 × 7	2	none				
LaCrosse, Wis.	10	1 × 20	4	none				
Williamsport, Pa.	26	2 × 13	2		13		4	
Jacksonville, Fla.	18	2 × 9	2	2(6)				
Newcastle, Pa.	14	2 × 7			7			
Newport, Ky.	12		2	3(6)	5	A. L.	2	3(6)
Oshkosh, Wis.	26	2 × 13	2	none				
Woonsocket, R.I.	15	3 × 5	1	100	5	1 × 5	1	150

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STATISTICS OF AMERICAN CITY COUNCILS. (*Continued.*)

	Single or Larger House				Smaller House			
	No. of members	How chosen (1)	Term	Salary (2)	No. of members	How chosen (1)	Term	Salary (2)
Pueblo, Colo.	8	1 × 8	2	$390				
Atlantic City, N.J.								
Passaic, N.J.	13		3					
Bay City, Mich.	22	2 × 11	2	2(6)				
Fort Worth, Tex.	9	1 × 9	2	96				
Lexington, Ky.	12		2	3(6)	8	A. L.	2	$3(6)
Gloucester, Mass.	24	3 × 8	1	none	8	1 × 8	1	none
South Omaha, Neb.	6		2	600				
New Britain, Conn.	24		2	none	6	A. L.	2	none
Council Bluffs, Ia.	8	6 + 2	2	250				
Cedar Rapids, Ia.	10	8 + 2	2	100				
Easton, Pa.	24	2 × 12	2		12	1 × 12	4	
Jackson, Mich.	16	2 × 8	2	75				

[1] The multiplication sign (×) indicates election by wards or districts, the first figure showing the number of members from each district (n indicating a variable number), and the second figure showing the number of districts.

The plus sign (+) indicates election partly by districts and partly at large. The figure given first shows the number of members elected by wards; the second figure shows the number elected at large.

A. L. indicates election at large, on a general ticket for the whole city without ward or district members.

[2] Annual salary is given except where otherwise noted.

[3] No city council.

[4] A small property qualification is required of electors for the city council.

[5] Members of two administrative boards act jointly as the city council.

[6] Per meeting.

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THE REPEAL OF THE STAMP ACT.

THE passage of the Stamp Act by the British Parliament, on March 4, 1765, was but a part of the policy inaugurated by the Grenville ministry of raising a revenue from the colonies. This the prime minister, George Grenville, proposed to accomplish in three ways: first, by the renewal of old and the imposition of new duties; secondly, by the prevention of smuggling, and the enforcement of the Acts of Trade, thus greatly increasing the customs dues; thirdly, by an internal tax on all legal and commercial papers. The revenue thus raised was to be used for the maintenance of a standing army in America, to protect the territory acquired in the war with France. This expense was felt to be more than the taxpayers of England, already heavily burdened, could bear. The first two of these measures were, in spite of a certain amount of grumbling by the colonists, successfully enforced, but the failure of the attempt to levy an internal colonial tax is well known. Indeed the Stamp Act had barely been put in force when it was repealed, for although the bill was passed in March, 1765, it did not take effect until November 1, and was repealed on March 20 of the following year.

For this sudden change of policy four reasons may be given: first, the change of ministry; secondly, the influence in Parliament of several important men, as, for example, Pitt, Lord Camden, Burke, and Benjamin Franklin; thirdly, the resistance of the colonists to the act; and fourthly, the protests of the merchants and traders of England.

I. *The change of ministry.* — The fall of the Grenville ministry, which occurred in May, 1764, was by no means an unexpected event. Grenville had always been personally obnoxious to George III, who was continually intriguing with Pitt to form a new ministry. The king was also influenced against his minister by his Scotch favourite, Lord Bute, who had been disappointed in his expectation of finding in Grenville a convenient tool. But the

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immediate cause of Grenville's fall was his bungling of the Regency Bill in his attempt to prevent the princess dowager's becoming regent. This change of ministry had an important influence upon the repeal of the Stamp Act. With Grenville in power, the repeal might never have taken place, for later in Parliament he advocated the enforcement of the act even by arms.

The new ministry was composed largely of the "New Whigs," with the Marquis of Rockingham at its head, and General Conway as one of the secretaries of state. Although by no means brilliant or homogeneous, it certainly stood for broader ideas of personal liberty and for a more liberal trade policy. Grenville's administration had undoubtedly been characterized, as Walpole says, by "arbitrary measures," as for instance the famous General Warrants Bill. After his fall, the raising of a revenue was no longer the chief aim, nor did the Navigation Acts continue to be the "idol" of the ministers. A new spirit of conciliation is seen in the colonial despatches of Secretary Conway, in which the governors are advised to endeavour "by lenient and persuasive methods . . . to restore peace and tranquillity." [1] But unfortunately, as Mr. Whatley wrote to Grenville, the ministers "are undetermined about the measures to be taken . . . if the tumult continues." [2] They were, in fact, in a most difficult position. They hesitated to repeal the act, as the abandonment of a tax because of opposition to it would be a dangerous precedent, and the abandonment of this tax would seem a denial of a prerogative of Parliament — the right to legislate for the colonies. On the other hand, they feared that its enforcement would mean the continuation of anarchy in America and great commercial and financial loss to England. Even when the disorders in America had convinced the ministry of the impossibility of an enforcement of the act, they were not unanimous. The question then arose: Shall the act be totally repealed or merely modified in its most objectionable points? The result of these conflicting considerations was an unfortunate hesitation. The Parliament did not assemble until December 17, and it separated for the Christmas recess without transacting any business, except issuing writs to fill up

[1] Colonial Pamphlets, 1762–1765. [2] Grenville Papers, iii, 100

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vacancies. Even during this interval "the ministry found no regular or consistent plan of operation and mutual support." [1]

When at last the ministry did decide upon a total and immediate repeal, it had to make head, as Dr. Moffatt, an American, wrote to another American, "against a sea of hindrances and opposition from many quarters felt, known and unseen." [2] It had to face not only open opposition in Parliament, but the secret opposition of the king and his party.

> And lest mankind [writes Horace Walpole] should misapprehend the part the favourite intended to take on the Stamp Act, Lord Denbigh, his standard-bearer, and Augustus Hervey asked . . . leave to resign their places, as they purposed to vote against the repeal. The farce was carried on by the king . . . his Majesty told them, that they were at liberty to vote against him and keep their places. This was, in effect, ordering his servants to oppose his ministers.[3]

Besides "the king's friends," the Bedford and Grenville factions opposed the repeal and were for taking "violent measures," [4] as Lord Chesterfield wrote to his son. The ministry, however, maintained with firmness its decision to secure a total repeal and not a modification of the act, and this in its turn modified the "violent measures" of the opposition. The latter, abandoning a futile attempt to obtain the enforcement of the act as it stood, now advocated its modification and then its strict enforcement in its modified form. Thus George Grenville, the leader of the opposition in the lower house, moved on January 5, that the words "explain and amend" be substituted for "repeal"; [5] while the Duke of Bedford, an opposition leader in the House of Lords, about the same time informed the king that

> should his Majesty be inclined to pursue the modification, instead of the total repeal of the Stamp Act which his ministers intend to propose to Parliament, the Duke of Bedford will be happy to receive his Majesty's commands for attending him.[6]

[1] Parliamentary History, xvi, 90, 91, foot-note. [2] Grenville Papers, iii, 237.
[3] Walpole Memoirs, ii, 183. [4] Parliamentary History, xvi, 89.
[5] Memoirs of Rockingham, i, 275.
[6] Bedford, Correspondence, edited by Lord John Russel, iii, 329, foot-note.

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This is an excellent example of the intrigues against which the ministry had to contend.

II. *The support of the repeal by influential men in Parliament.* — While the new ministry had to face a powerful opposition, it found on the other hand an unexpected ally in Mr. Pitt, and an unlooked-for strength in its follower, Edmund Burke. Mr. Pitt's attitude towards the act had not hitherto been known, and so far the ministry had looked in vain to him for support and advice. Now, however, he came forward as the strongest champion for repeal, and a most important one, as he was the popular hero of the day, and his name, as Walpole says, made "a sort of party." [1] Burke was at this time almost unknown, and the influence he exerted for the repeal was merely that of eloquence, but eloquence great enough to receive the praise of Pitt [2] and an "address of thanks" from seventy-seven merchants.[3] Probably equal in influence to the support of Pitt was the testimony of Benjamin Franklin. His examination in the House of Commons doubtless dispelled many popular illusions regarding the colonies, as for instance their fabulous wealth, and gave convincing proof of their determination to resist the act to the bitter end. It gave the house the rare but exceedingly valuable opportunity of viewing their own colonial legislation from the American standpoint. The support of Lord Camden in the House of Lords was probably not unexpected, since he owed his seat to the Rockingham ministry; but it was very valuable, as he was one of the foremost lawyers of his day, and exceedingly popular because of his acquittal of Wilkes, while he was chief justice. The importance of his able advocacy of the repeal in the upper house becomes apparent when one remembers that Lord Mansfield, who had hitherto monopolized the leadership of that house, spoke against the bill.

What, however, were the considerations that constrained a vacillating ministry to propose to Parliament the repeal of the Stamp Act? These were undoubtedly the opposition of the colonists and the protests of the British merchants.

[1] Walpole, Letters to Sir Horace Mann, i, 277.
[2] Parliamentary History, xvi, 108, foot-note.
[3] Correspondence of Burke, edited by Fitzwilliam, i, 194.

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III. *The opposition in America.* — Before the passage of the Stamp Act in March, 1765, the grievances of the colonists were mainly economic, and the full significance of such a measure as the proposed act does not seem to have been generally realized until the autumn of 1764. In April, 1764, the Grenville ministry had passed an act imposing heavy duties on foreign sugar, wine, coffee, silk, and other goods imported into the colonies. These were the chief articles of colonial commerce, and the requirement that the duties should be paid in bullion made the burden heavier, as money was extremely scarce in the colonies. Besides this, the famous Molasses Act of George II, which had placed almost prohibitory duties on foreign rum and molasses, was made perpetual. This act had been passed to force New England to abandon her trade with the prosperous French and Dutch West Indies, and to bring her lumber and horses to the thriftless English West Indies alone. The strict enforcement of this act would have deprived New England to a great extent of its most lucrative trade, and of its one source of bullion with which to pay for English manufactured goods; fortunately the act had remained mere paper legislation. But now the rates were so lowered as to transform an almost prohibitory duty into one for revenue, and the law was rigidly enforced by the officers of the British ships stationed along the coast. This brought especial distress upon New England, but the new duties affected all the colonies in a greater or less degree.

These new duties were commonly considered as taxes, and the distinction between internal and external taxation — later so strongly emphasized — was not yet generally made. Proof of this is found in the instructions of the colonial agents, and in the petitions and resolutions of the colonial assemblies. For instance, Hutchinson, the historian of New England, would seem to imply that before the passage of the act of 1764 the Massachusetts assembly drew a distinction between a duty imposed for mere trade regulation and one for revenue, and regarded the latter as a tax. According to his account, the proposition of the Massachusetts agent Bollan, that the colony should apply for a reduction of the sugar duty, was rejected by the assembly because "it was not advisable to apply for the reduction of the duty in order to the

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payment of it, but rather that the act . . . should be revived as a prohibition." [1] Moreover, when in January, 1764, this same assembly drew up a protest against the proposed renewal of the Sugar Act, "in which the authority of Parliament to impose the duty was not denied," "the opposers of the address in the house laboured for the assertion of an exclusive right to impose taxes and duties on inhabitants in all cases whatsoever." [2] Likewise, the town of Boston in the instructions to its representatives, in May of that year, acknowledged its submission to all just and necessary regulations of trade; but, on the other hand, it declared: "There is no room for delay . . . These unexpected proceedings may be preparatory to more extensive taxation; for if our trade may be taxed, why not our lands and everything we possess?" [3] Again in the next month, in the instructions drawn up by the Massachusetts assembly, under the guidance of Otis, for their London agent, the question is raised:

> Can it be possible that duties and taxes shall be assessed without the voice or consent of an American parliament? . . . Prohibitions of trade are neither equitable nor just, but the power of taxing is the great barrier of British liberty.

Here again the distinction that is drawn is between duties imposed for trade regulation and those imposed for revenue. Resolutions were also adopted by this same assembly, protesting against "the Imposition of Duties and Taxes by the Parliament of Great Britain, upon a people who are not represented in the House of Commons." [5] It likewise sent circular letters to the other colonial assemblies asking their coöperation to "obtain a Repeal of the Sugar Acts and . . . to prevent a Stamp Act" [6] — making no difference between the two.

In the Rhode Island assembly also no distinction between the two forms of taxation seems to have been made: in its instructions to the committee appointed to confer with the other colonies,

[1] Hutchinson, History of Massachusetts Bay Colony, i, 108, 109.
[2] *Ibid.*, i, 114, 115. [3] *Ibid.*, i, 107. [4] *Ibid.*, i, 112.
[5] Proceedings in Parliament and in Massachusetts (pamphlets published, 1774), p. 5.
[6] Votes of the Assembly of Pennsylvania, 1758–1767, p. 355.

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the Sugar and Duty Acts and the proposed Stamp Act are grouped together without any discrimination.[1] In October of that same year, the New York assembly sent the following manifesto to the House of Lords:

> The authority of the parliament of Great Britain to model the trade of the whole empire, so as to subserve the interest of her own, we are ready to recognize . . . ; but the freedom to drive all kinds of traffic, in subordination to and not inconsistent with the British trade, and an exemption from all duties in such a course of commerce, is humbly claimed by the colonies as the most essential of all the rights to which they are entitled. . . . For, since all impositions, whether they be internal taxes, or duties paid for what we consume, equally diminish the estates upon which they are charged, what avails it to any people by which of them they are impoverished?[2]

In that same month the North Carolina assembly stated in its address to the governor: "We observe our commerce . . . burthened with new taxes . . . against what we esteem our inherent right and exclusive privilege of imposing our own taxes."[3]

Not only the resolutions of the assemblies, but also the writings of the prominent politicians and statesmen show that until the autumn of 1764 the distinction between the two forms of taxation was not commonly made. For example, Governor Bernard, in that summer, in his scheme of American polity, declared that Parliament's power both to impose port duties and to levy internal taxes was not to be disputed.[4] James Otis, in his attack on Bernard's scheme, agreed with him that "There is no foundation for distinction between external and internal taxes; if parliament may tax our trade, they may lay stamps, land-taxes, tithes and so on indefinitely."[5] This opinion was reiterated by Thomas Hutchinson in a letter to the secretary of the chancellor of the Exchequer. "Nor are the privileges of the people," he wrote, "less affected by duties laid for the sake of the money arising from them than by an internal tax."[6] Beside Otis, another emi-

[1] Colonial Records of Rhode Island, vi, 403.
[2] Bancroft, History of the United States (ed. of 1885), iii, 90.
[3] Colonial Records of North Carolina, vi, 1261.
[4] Bancroft, iii, 79. [5] *Ibid.*, iii, 82. [6] *Ibid.*, iii. 85.

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nent young lawyer of Boston, Oxenbridge Thatcher, published in September a pamphlet, in which he declared that the late Duty Act imposed a "tax" upon the colonies without their consent.[1] That the word "duty" in these resolutions and pamphlets did not mean an internal tax, is shown by the testimony of Franklin before the House of Commons that "by taxes they [the colonists] mean internal taxes; by duties they mean customs."[2]

Although the colonists regarded these duties as taxes, they paid them without any great opposition, because the act of 1764 was, on the whole, in accord with the double fiscal system under which they had always labored. From the very beginning of their history, all forms of internal taxation were a part of their several departments of finance, while colonial trade regulations and customs dues were under the control of the British exchequer. When, however, in the autumn of 1764, "the centre of gravity shifted from the measure that had . . . to the measure that might become a law,"[3] it was quite natural that they should consider the proposed Stamp Act a violation of the former financial policy. As a consequence, they began to distinguish consciously, as before they had distinguished unconsciously, between the two forms of taxation.

But even after the autumn of 1764 this distinction was not accepted by all the American colonists. James Otis, just before the passage of the Stamp Act, acknowledged that "no less certain is it that the Parliament of Great Britain has a just and equitable right . . . to impose taxes on the colonies, internal and external, on lands as well as on trade."[4] Nor was any such distinction made in Dickinson's pamphlet, *The Late Regulations respecting the British Colonies*, printed in 1765, where the same argument was used against the Stamp Act and the Acts of Trade, *viz.* their economic effect.[5] Even Franklin, who in his testimony before the House of Commons laid great emphasis upon the distinction,

[1] The Sentiments of a British American, in Palfrey, History of New England, v, 280.

[2] Parliamentary History, xvi, 159.

[3] Tyler, History of the Literature of the Revolution, p. 61.

[4] A Vindication of the British Colonies, p. 21.

[5] Pennsylvania Historical Society Publications, xiii, p. 67.

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seemed to admit, later, that precedents were against the Americans. In 1766, he wrote:

> The Parliament, it is acknowledged, have made many oppressive laws relating to America, which have passed without opposition, partly through the inattention [of the colonists] to the full extent of their rights, while employed in labour to procure the necessaries of life. But that is a wicked guardian . . . who first takes advantage of weakness incident to minority . . . and, when the pupil comes of age, urges these very impositions as precedents to justify continuing them and adding others.[1]

Strikingly similar is the statement of Richard Bland of Virginia in the same year:

> But whether the Act of 25 Charles II, or any of the other acts, have been complained of as infringements of the rights of the colonies or not, is immaterial; for, if a man of superior strength takes my coat from me, that cannot give him a right to my cloak.[2]

Although opposition was expressed against the act of 1764, it was not until after the actual passage of the Stamp Act that breaches of the peace occurred. At the same time the tone of the assemblies became much bolder: the colonies of Virginia and Massachusetts passed their famous resolutions. Non-importation agreements were drawn up by the merchants of New York and Pennsylvania. Finally the culmination of legal resistance was reached in the Stamp Act Congress of October, 1765. But even during these days of excitement, when the words "right" and "privilege" were on every one's lips, the economic grievances were not entirely forgotten. Even in the resolutions of the Stamp Act Congress, the trade restrictions were placed among the complaints. Indeed, in the remonstrances and resolutions these restrictions were almost invariably placed side by side with the Stamp Act as a burden on the colonists, although not as one that so nearly touched their rights. Another proof of the influ-

[1] Observations on "A Letter from a Merchant to his Nephew in America." Works of Benjamin Franklin, edited by Jared Sparks, p. 238.

[2] An Enquiry into the Rights of the British Colonies, p. 19.

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ence of the economic grievances is given in a letter of Mr. Whatley to Mr. Grenville, October 17, 1765. "The rage of the people," he writes, "seems not to be confined to the Stamp Act; the officers of the customs are also the object of it."[1] And in June, 1766, Secretary Richmond wrote to Governor Sharpe of Maryland, that not only had the repeal of the Stamp Act been granted to the colonists, but that also "those Grievances in Trade, which seemed to be the first and chief object of their uneasiness, have been taken into consideration."[2] So likewise the pamphlet *True Interest of America* stated: "Though the Stamp Duty has been the ostensible cause of the late riots, yet that in reality is but a small part of their grievances." A summary of these "grievances" was given by Franklin in his testimony before the House of Commons. The antagonism of the colonies to Parliament, he testified, was due

> to a concurrence of causes: the restraints lately laid on their trade, by which the bringing in of foreign gold and silver into the colonies was prevented; the prohibition of making paper money among themselves; and then demanding a new and heavy tax by stamps; taking away, at the same time, trials by juries, and refusing to hear our humble petitions.[3]

The influence of one of these causes, "taking away trials by juries," has probably not been sufficiently emphasized. This privilege had been restricted by the Duty Act of 1764 and by the Stamp Act, as all cases arising under these acts were to be tried by the admiralty courts. The same was of course true of all breaches of the Acts of Trade. The colonists considered the extension of the powers of the admiralty courts as an "infringement of their natural rights as Englishmen," as early as they did parliamentary taxation. Proof of this is found as early as 1764, in the resolutions of the Massachusetts assembly,[4] in a petition of Rhode Island to the king,[5] and also in the writings of such men

[1] Grenville Papers, iii, 100. [2] Correspondence of Governor Sharpe, iii, 312.
[3] Parliamentary History, xvi, 141, 142.
[4] Proceedings in Parliament and Massachusetts, p. 5.
[5] Colonial Records of Rhode Island, vi, 415.

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as Oxenbridge Thatcher,[1] Stephen Hopkins,[2] Daniel Dulany[3] and Samuel Adams.[4] Also in the resolutions regarding the Stamp Act Congress, in the following year, the legislatures of Maryland, Rhode Island and South Carolina stated this grievance as a violation of their rights. In the resolutions of the Stamp Act Congress the extension of the powers of the admiralty courts is pronounced as dangerous to their liberty as the tax itself. In the petitions also of this congress to the king and to the two houses of Parliament, the two "invaluable" and "essential" rights that they plead for are "the rights of taxing ourselves, and trial by our peers."[5] But just as in the distinction between internal and external taxation, one can find an economic as well as a political cause for this devotion to trial by jury. Jury trial had been the chief method of obstructing any attempted enforcement of the Acts of Trade by English officials, for the juries had persistently brought in verdicts unfavorable to the king. One has only to read the reports of Edward Randolph to be convinced — even after allowance has been made for his prejudice — how jealously the jurors guarded the pockets of the colonists.

In last analysis, the fundamental cause of the revolt in America was the peace of 1763, which freed the colonies from all fear of a French invasion. As long as this danger existed, they felt their dependence upon the mother country, and consequently were forced to remain loyal and obedient. Now that the danger was removed, they no longer felt the need of assistance, especially as they were making great strides towards economic and commercial independence. As Franklin put it, America had grown out of its youth into its manhood. The saying of the Grenville party at this time, "obedience and protection are reciprocal," was true in more than one sense. Legally no possible fault can be found with the Stamp Act, but practically it proved a failure because it came too late. If it had been imposed ten years earlier its fate

[1] Tyler, Literature of the American Revolution, p. 54. [2] *Ibid.*, pp. 63, 64.
[3] The Rights of the Colonists Examined, pp. 101–104.
[4] Charles Francis Adams, Life and Works of John Adams, i, 66, 67; iii, 466, 467.
[5] Authentick Account of the Proceedings of the Congress held at New York, 1765.

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would probably have been very different, and Grenville would have been saved a great deal of abuse.

There is ample proof that the revolt in America caused serious alarm in England. Mr. Whatley's statement regarding the Virginia resolutions is true of all the proceedings: "They are such," he wrote to Mr. Grenville, "as in my opinion cannot escape the notice of Parliament." [1] Indeed in the debates in Parliament the uneasiness aroused by the disturbed condition of the colonies is clearly shown.

IV. *The protests of the English merchants.* — The hostility of the British manufacturers, merchants and workmen and the decrease of British trade were probably even more influential in effecting the repeal than the disturbances in America. Among the laboring classes, at least, there was much restlessness. This was shown in the great opposition to the cider tax, and in the riot after the prohibition of Italian silks. The people were suffering from the heavy taxes and business depression resulting from the recent war. To this was now added the falling off of one of their most lucrative branches of trade, that with America; for the policy of Grenville reacted disastrously upon the mother country. In the trade between the colonies and England, the former had been forced to pay partly in bullion, as they imported more manufactured goods than they exported raw materials. They had hitherto been able to get this bullion from the foreign West Indies, for with these the balance of trade was in their favor. But now this source of supply was cut off by the strict enforcement of the Acts of Trade, while the money market was still further tightened by the paper money acts, and by the demand that the new duties should be paid in bullion. Having no money to pay for manufactured goods, and being already in debt to the English merchants, the colonists were forced to retrench expenses, and to use homespun and other home-made articles. This meant of course the loss of many customers to the British merchants and traders.

The passage of the Stamp Act greatly increased these evils, by causing the colonists to determine, as a matter of principle, not

[1] Grenville Papers, iii, 198.

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to trade at all with Great Britain. Non-importation agreements were thus drawn up by the merchants of New York and Philadelphia, and the latter even bound themselves not to pay debts owing to England.[1] According to Walpole:

> The weapon with which the colonies armed themselves to most advantage, was the refusal of paying the debts they owed to our merchants at home, for goods and wares exported to the American provinces. These debts involved the . . . great trading towns in a common cause with the Americans . . . . [The ministers] were threatened . . . with insurrections in the trading towns at home, who loudly demanded a repeal of the bill, on which depended the payment of what was due to them, and the hopes of reëstablishing so beneficial a commerce.[2]

As is always the case, the "hard times" were felt especially by the laboring class. John Wentworth wrote to America "that the Marquis of Rockingham told him . . . that he knew there were already ten thousand workmen discharged from business in consequence of the advices from America."[3] Moreover, according to the *Annual Register*,

> A resolution began to be talked of, of stopping the exportation of tobacco from Virginia and South Carolina to Great Britain; by which, considering the great quantities of that article reëxported from Great Britain, and the immense sum so imperceptibly raised by what she herself consumed of it, her trade and especially her revenue could not fail of being considerably affected.[4]

Meanwhile the colonies were applying themselves so diligently to their home manufactures, "that many now began to be convinced of what they had till then thought impossible, that the colonies would soon supply themselves with every necessary of life."[5] England was thus not only temporarily deprived of her colonial trade, but her future trade was likewise menaced by this growing industrial independence of the colonists.

[1] New York Colonial Manuscripts, Brodhead, vii, 799, 800. Annual Register, 1765, p. 55.

[2] Walpole Memoirs, ii, 153. See also McPherson, Annals of Commerce, iii, 211.

[3] Life and Works of John Adams, i, 175.

[4] Annual Register, 1765, p. 56.

[5] *Ibid.*

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The inexpediency of the enforcement of this act was recognized in England. For example, Lord Chesterfield wrote to his son:

> Our trade to America brings in, *communibus annis*, two millions a year; and the Stamp Duty is but estimated at £100,000 a year, which I would by no means bring into the stock of the Exchequer at the loss or even the risk of a million a year to the national stock.[1]

The merchants and manufacturers showed their disapproval by deluging the House of Commons with petitions. These were sent by the merchants of London, Bristol, Liverpool, Halifax, Leeds, Lancaster, Manchester, Leicester, Bradford, Frome, Birmingham, Coventry, Macclesfield, Wolverhampton, Stourbridge, Dudley, Minehead, Taunton, Witney, Newcastle upon Tyne, Glasgow, Chippenham, and Nottingham — "all containing much the same complaint . . . and concluding with the same prayer," that the Stamp Act be repealed.[2] The popular feeling in London in regard to the act is shown by the fact that "at a great assembly, on a motion being made for petitioning his Majesty to enforce the American Stamp Act, *etc.*, it passed in the negative by more than two to one." [3]

That these petitions made an impression upon the House of Commons is proved by the questions asked Franklin concerning the effects of the act upon trade, and also by the frequent reference made in the debates to the decreased commerce. The opposition of the traders would naturally have influence with a Whig Parliament, as it was the policy of that party to ally itself with the mercantile classes.

This brings us to the arguments advanced within and without Parliament for and against the repeal. These may be divided into two main groups: first, arguments based on theories of government, according to which the Stamp Act was pronounced legal or illegal, right or wrong; secondly, arguments based upon expediency.

In arguing for repeal, both Camden and Pitt confined them-

[1] Parliamentary History, xvi, 89, foot-note.
[2] *Ibid.*, xvi, 133–136; Annual Register, 1766, pp. 35, 36.
[3] Annual Register, 1766, p. 62.

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selves almost entirely to the political and legal side of the question; and the arguments of each were practically the same. Pitt defined his own position, when at the opening of his speech he said: "I will only speak to one point, . . . I mean to the right." [1] The first of their arguments was that Parliament had no right to levy an internal tax upon the colonies, because the colonies were not represented in that body. "Taxation and representation," Lord Camden declared, "are inseparable." "As to the distinction," he continued, "of a virtual representation, it is so absurd as not to deserve an answer." [2] Pitt, likewise, while acknowledging the right of Parliament to legislate for the colonies, drew a sharp distinction between legislation and taxation. "Taxation," he declared, "is no part of the governing or legislative power. The taxes are a voluntary gift and grant of the Commons alone." [3] Both, however, acknowledged the right of Parliament to regulate colonial trade, as they considered that there was "a plain distinction between taxes levied for the purpose of raising a revenue, and duties imposed for the regulation of trade," although the latter might incidentally yield revenue.[3] They admitted that no colonial charter [4] conferred any right of exclusive taxation, but they based their assertion "on the common rights of Englishmen as declared by Magna Charta and the Petition of Right." They based it, further, upon the natural rights of man, and upon the law of nature which inseparably bound together taxation and representation. "God hath joined them, no British parliament can separate them." [5]

The ministry, on the other hand, and their chief supporters in the lower house, Conway and Burke, pressed the repeal solely on the ground of expediency. Their advocacy of the Declaratory Act, which asserted the supremacy of Parliament over the colonies, proves that they did not condemn the Stamp Act on constitutional grounds. Indeed the great cause of their hesitation in bringing forward the repeal bill, was fear of impairing the preroga-

[1] Parliamentary History, xvi, 99.
[2] *Ibid.*, xvi, 178, 180.
[3] *Ibid.*, xv, 99, 105.
[4] The Maryland Charter constituted an exception; see section xx. *Cf.* also Mereness, Maryland, pp. 478, 480.
[5] Parliamentary History, xvi, 178.

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tive of Parliament. According to the testimony of Mr. Trail, an American, the opinion of Mr. Conway was that "thē Stamp Act must be repealed, that there was some difficulty about coming off with honour, and that America would boast that she had conquered Britain." [1] Rockingham told him that the repeal of the act was necessary because "of such confusions as would be caused by enforcing it." [1] The policy of the ministry therefore was to uphold the doctrine of parliamentary control, while repealing the obnoxious act itself — a plan which, according to Burke, "without giving up the British authority, quieted the empire." [2] "I assure you," Burke wrote to his constituents of Bristol, "that if ever one man lived, more zealous than another for the supremacy of Parliament, . . . it was myself." [3] Thus, though Burke's speech was warmly commended by Pitt, the two were, as regards their principles, almost diametrically opposed. The one supported, the other opposed the Declaratory Act. The one was eminently practical in his arguments, and based his appeal on commercial policy; the other was strongly philosophic and theoretical, and founded his opinion on the natural and inalienable rights of man. "Mere speculation" [4] was as abhorrent to Burke, as it was dear to the Great Commoner.

Unfortunately the speeches made by Burke in 1766 against the Stamp Act have not been recorded, but his position is clearly indicated in his "Speech on American Taxation," in which he reviewed the parliamentary debates and defended the Rockingham administration, with whose policy he declared himself to be completely in sympathy. This policy was a total repeal, based "on principles of policy, of equity and of commerce." It therefore "differed fundamentally" from the policies of both the opposition and of Pitt, but "preserved the object of both." The ministers "preserved the authority . . . the equity of Great Britain. They made the Declaratory Act, they repealed the Stamp Act."

Burke, unlike Pitt, made no distinction between internal and external taxes, but considered that the authority of Parliament

[1] Life and Works of John Adams, ii, 175.
[2] Memoirs of the Marquis of Rockingham, edited by Albemarle, i, 319.
[3] Burke, Correspondence, edited by Fitzwilliam, i, 46.
[4] *Ibid.*, i, 39.

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extended over one as much as over the other. The Duty Act of 1764 and the Stamp Act of 1765 were therefore equally within the competence of Parliament, but they were equally inconsistent with the established commercial policy of the empire.

> That policy was, from the beginning, purely commercial, and the commercial system was wholly restrictive. It was a system of a monopoly . . . from the year 1660 to . . . 1764. . . . I venture to say, that during the whole period, a parliamentary revenue from thence was never once in contemplation.

This monopoly he considered justifiable, because the colonies "were indemnified for it by a pecuniary compensation," as it was by means of British capital that "they were enabled to proceed with their fisheries, *etc.*" The act of 1764, however,

> began the second period of the policy of this country with regard to the colonies; by which the scheme of a regular plantation parliamentary revenue was adopted . . ., a revenue not substituted in the place of, but superadded to, a monopoly. . . . Whether you were right or wrong in establishing the colonies on the principles of commercial monopoly, rather than on that of revenue, is at this day a problem of mere speculation. You cannot have both. To join together the restraints of an universal internal and external monopoly with an universal internal and external taxation, is . . . perfect uncompensated slavery.[1]

Midway between Pitt and Burke, stood Benjamin Franklin. With Pitt and Camden, he defended the rights of the colonies, and claimed the same privileges and advanced practically the same arguments as they. With Pitt, he attacked the justice of the act, in that it laid a heavier burden upon the colonists than they could bear, and forced them to share the expenses of a war undertaken primarily for the preservation of the British Indian trade; a trade in which the Americans had no interest. Like Pitt, Franklin claimed that the colonists had already contributed their share of the expenses, in the part they had taken in the war. Franklin also maintained that the tax fell more heavily on the poor farmer than on the rich trader, but that in either case there

[1] Burke, Speech on American Taxation, 2d ed., printed in London, 1775, by J. Dodsley, pp. 38, 39, 41, 50, 51, 44, 66.

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was not enough bullion to pay it. On the other hand, he laid stress upon the practical objections to the act. He showed how disastrous had been its effects upon trade, and he pointed out that America, through the non-importation agreements and the consequent impetus to her manufactures, was becoming every day more independent industrially. He also testified to the utter impossibility of ever collecting any internal tax, however small, "unless by force of arms." [1]

Franklin made one assertion which was made by no Englishman, and which was rather startling in its significance. "The colonies," he asserted, "are not supposed to be within the realm." [2] Probably from policy the full meaning of this theory was not shown in his testimony before the House of Commons; but later in the same year, in his comments upon the minority report of the House of Lords, he denied the right of Parliament to tax the colonies, not only because they were not represented in that body, but also because they were entirely without its domain. To the king alone they were subordinate, both in questions of legislation and of taxation. He wrote:

I likewise protest . . . against your Declaratory Bill, that the Parliament of Great Britain has not, never had, and of right never can have, without consent . . . power to make laws of sufficient force to bind the subjects in America in any case whatever, and particularly in taxation, . . . as the Americans are without the realm. . . . Their only bond of union is the King . . . America is not part of the dominions of England, but of the King's dominions. England is a dominion itself and has no dominions.[3]

Somewhat the same idea is expressed in another pamphlet of this year, 1766. *An Enquiry into the Rights of the British Colonies* by Richard Bland.

It is evident [Bland declared] that the colonists . . . long before the first act of navigation . . . were respected as a distinct state, independent as to their internal government of the original kingdom, but

[1] Parliamentary History, xvi, 140. [2] *Ibid.*, xvi, 156.
[3] Letters and Miscellaneous Papers of Benjamin Franklin, edited by Jared Sparks, pp. 225, 231, 254.

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united with her as to their external policy in the closest and most intimate League and Amity.

The author would here seem to imply that the relations between England and her colonies were those of two equal and independent countries, bound together by a friendly commercial treaty. "May not the king," Bland inquired, "have prerogatives which he has a right to exercise without the consent of Parliament?"[1] Could he not therefore grant colonial charters without Parliament's consent? Joseph Hawley, likewise, in the Massachusetts assembly of the same year declared: "The Parliament of Great Britain has no right to legislate for us."[2]

These extreme views were by no means generally accepted by the colonists at this time. All the other opinions of Franklin, however, were representative: his arguments were the arguments employed by his fellow-countrymen. Though they laid particular stress upon their rights, they did not neglect the practical side, nor fail to appeal to the self-interest of England by demonstrating the decrease in her American trade. As it was put in *An Essay on the Trade of the Northern Colonies with Great Britain*, the colonies can be made to yield the greatest commercial advantage to England by being permitted to acquire the greatest commercial prosperity for themselves. The essential condition of such prosperity is freedom.[3] This was certainly in England the most influential of all their arguments. But it was their practical demonstrations rather than their theoretical writings, that had weight. The most convincing arguments were their refusal to use the stamp paper, their mob violence, their non-importation agreements, their repudiation of English debts, and particularly the proof of their growing economic as well as political independence of the mother country.

In the British Parliament itself, it was the practical demonstration of the inexpediency of the act by Conway and Burke and not the assertion of the rights of the colonies by Pitt that won the day. As Governor Sharpe of Maryland wrote to Lord Baltimore: "I

[1] An Enquiry into the Rights of the British Colonies, pp. 16, 19.
[2] Hosmer, Life of Samuel Adams, p. 96.
[3] Tyler, History of the Literature of the Revolution, p. 58.

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find by several Letters . . . that it [the Stamp Act] is at length repealed, not on the principles contended for by the colonies but purely out of regard to the Commercial Interests of Great Britain."[1] Franklin likewise testified that if the act were repealed the colonists would probably think that this was done "from a conviction of its inexpediency."[2] That this was so is distinctly stated in the *Annual Register*.

> Those who contended for the repeal were divided in opinion as to the right of taxation; the more numerous body, of whom were the ministry, insisted that the legislature of Great Britain had an undoubted right to tax the colonies, but relied on the inexpediency of the present tax. . . . Those who denied the right of taxation were not so numerous.[3]

Pitt's influence was indeed great, but it was rather among the masses of the people, not represented in Parliament, than in Parliament itself, where, according to Walpole, "his followers [were] exceeding few."[4] His doctrines were not only rejected but were considered actually dangerous even by some supporters of the repeal. In Lord Hardwick's opinion, they were "absurd and pernicious."[5] Moreover the almost unanimous passage of the Declaratory Act proves that Pitt's theories were not accepted, and that therefore his arguments could not have been the compelling motive for repeal. Indeed, according to Sir George Savile, "the Act would certainly not have been repealed if men's minds had not been in some measure satisfied with the Declaration of Rights."[6]

Outside of Parliament also, there seems to have been little doubt as to the right of Parliament to tax the colonies; all the British pamphlets take the legality of the act for granted. Even the two staunch supporters of the rights of the Americans, Pitt and Camden, did not despise using the argument of "inexpediency." "But, my lords," Lord Camden said in closing, "even supposing the Americans have no exclusive right to tax themselves, I maintain it would be good policy to give it them. . . .

[1] Correspondence of Governor Sharpe, iii, 304.
[2] Parliamentary History, xvi, 151.
[3] Annual Register, 1766, 37.
[4] Walpole, Letters to Sir Horace Mann, i, 277.
[5] Memoirs of Rockingham, i, 277.
[6] *Ibid.*, i, 305. See also Letter of Albemarle, *ibid.*, p. 285.

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America feels she can do better without us than we without her." [1] "You could not subsist," declared Pitt, "and be a people with that defalcation of imports." [2]

The great argument for the repeal, therefore, was the inexpediency of the act, and its chief object the restoration of quiet and harmony in order that the colonial trade might be saved. This was the primary motive, and not the fear of the political independence of the colonies. This is proven by facts already noticed; the emphasis laid upon the effects of the act on trade both in the pamphlets, in the debates, and in the examination of Franklin; and secondly the great influence of the merchants in obtaining the repeal. For instance, according to Burke, "Barlow Trecothick, . . . a member for London and a merchant in the American trade" was "the principal instrument" in securing the repeal.[3] "I perceive," wrote Governor Sharpe, "that the Commercial Interest of Great Britain, and not the claims or clamours of the colonies, has been urged as the sole or at least the most proper Reason to be given for the Repeal." [4] Indeed the preamble of the repeal puts this beyond all doubt, by stating that "the continuance of the former acts would be attended with many inconveniences, and may be productive of consequences greatly detrimental to the commercial interests of these kingdoms." [5] Thus "by relieving America," they aimed "to save the trade of Great Britain." [6]

But in spite of the strength of these arguments, the repeal bill was by no means rushed through Parliament as the act itself had been. On the contrary it met an able resistance. Burke characterized it as "one of the ablest, and . . . not the most scrupulous oppositions that perhaps ever was in the House." [7] George Grenville exerted all his forces to save his "darling act," as Walpole terms it; and two strong leaders were secured by the opposition in the upper house in Lord Chancellor Northington and Lord Mansfield. In the House of Lords the opposition was especially strong because of the combined efforts of the Bedford and

[1] Parliamentary History, xvi, 170. [2] Walpole Memoirs, ii, 217.
[3] Memoirs of Rockingham, i, p. 319.
[4] Correspondence of Governor Sharpe, iii, 306. [5] Annual Register, 1766, 194.
[6] Chatham Correspondence, ii, 375, Geo. Onslow to Pitt.
[7] Burke, Speech on American Taxation, 2d ed., p. 62.

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Temple factions and of "the king's friends." Consequently on both the second and third readings of the bill, minority reports were drawn up by the Lords.

In the opposition the chief advocate of the rights of Parliament was Lord Mansfield. "It is out of the question," he declared, "whether it is or is not expedient to repeal this act. . . . The law is made, and the question is, whether you had a right to make it." He did not base his argument upon any theory of "virtual representation," for such representation he did not claim even for Englishmen at home. In his opinion, "the notion now taken up, that every subject must be represented by deputy, if he does not vote in parliament himself, is merely ideal." Representation by election first arose merely "by the favour of the crown." "As to the sound," he continued, "which has been thrown out, that no money can be raised without consent, the direct contrary is the truth; for if any number of people should agree to raise money for the King, it is unconstitutional." Consent is unnecessary, he maintained, because the British Parliament does not represent Englishmen as individuals, but

> the whole British empire, and has authority to bind every part and every subject without the least distinction, whether such subjects have a right to vote or not, or whether the law binds places within the realm or without.[1]

This legislative power of the British Parliament precluded any exclusive right of taxation by the colonies. And, as Soame Jenyns wrote, no charter [2]

> ever pretended to grant such a privilege to any colony in America, and had they granted it, it could have had no force, . . . their charter being derived from the crown, and no charter from the crown can possibly supersede the right of the whole legislature.[3]

The distinction between external and internal taxes was likewise declared fallacious by Lord Mansfield,[4] and indeed by all the

[1] Parliamentary History, xvi, 172–174.
[2] The Maryland charter was overlooked; *cf. supra*, p. 266, v. 4.
[3] The Objections to the Taxation of Our American Colonies, p. 9.
[4] Parliamentary History, xvi, 101, 176.

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members of the opposition. Lord Temple especially "was Jocose upon the distinction of an Internal Taxation: what, says he, whilst the Stamp Act operates upon the Merchant shall we call it a Commercial Regulation, when upon the Law a Legal Regulation, and so on . . . ." [1] It was moreover stated with some truth by Lord Lyttleton that "the Americans themselves make no distinction between external and internal taxes." [2]

Other members of the opposition, maintaining the theory which Lord Mansfield rejected, argued that Parliament had the right to tax the colonies, because the colonies were "virtually" represented in Parliament, as were the non-voters of England.

> There can be no doubt but that the inhabitants of the colonies are as much represented in parliament as the greatest part of the people of England are, among nine millions of whom there are eight who have no votes in electing members of parliament. . . . A member of parliament chosen for any borough represents not only the constituents and inhabitants of that particular place, but he represents . . . the commons of the land, and the inhabitants of all the colonies and dominions of Great Britain, and is in duty . . . bound to take care of their interests.[3]

All the British pamphleteers advanced this new theory of universal as opposed to local representation, and derived from it the virtual representation of the colonists.[4]

Having thus established the legality of the Stamp Act, the opposition, in the second place, defended its justice. "Ungrateful people of America!" exclaimed Mr. Grenville: "Bounties have been extended to them . . . while you yourselves were loaded with an enormous debt." [5] The war, it was argued, had been undertaken primarily for the defence of the colonies, and they had profited the most by its results. It was therefore but just that they should at least bear the expense of their own army, es-

[1] Hammersly to Sharpe, in Correspondence of Governor Sharpe, iii, 27.

[2] Parliamentary History, xvi, 167. [3] *Ibid.*, xvi, 201.

[4] See Soame Jenyns, The Objections to the Taxation of Our American Colonies, pp. 4, 5; A Letter from a Gentleman at Halifax, Tyler, *op. cit.* p. 71; Letters from a Merchant in London, Private Letters and MSS. Papers of Franklin, ed. by Sparks, p. 240.

[5] Parliamentary History, xvi, 102.

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pecially as England was heavily burdened with debt, while they were almost entirely free from debt. "Protection and obedience are reciprocal" was their answer to "no taxation without representation." A parliamentary tax, it was asserted, was the only method of obtaining the necessary aid. Soame Jenyns asked, with good cause:

> Have their Assemblies shown so much Obedience to the Orders of the Crown that we could reasonably expect that they would immediately tax themselves on the arbitrary command of a minister? . . . and should we not receive Votes, Speeches . . . Petitions . . . in abundance, instead of Taxes? [1]

In the third place, the opposition took up the question of the expediency of the enforcement of the act, though, as the *Annual Register* stated: "So many instances of the inexpediency of the Stamp duty had already occurred, that the question was scarcely controvertible." [2] However, they maintained that the abrogation of this important right of Parliament would in the end have more disastrous results than the present financial loss. The repeal would stamp with approval the revolt and treasonable utterances in the colonies, and encourage them to repudiate all the acts of Parliament, particularly those relating to trade. As William Knox, the ex-agent for Georgia, put it, the result of the repeal in the colonies would be "addresses of thanks and measures of rebellion." [3] Moreover they declared that the enforcement of the act had by no means been proved impossible, as no vigorous or prompt measures had been taken by the ministry. Undoubtedly it had been a mistake to give the colonies, in 1764, a year's warning in which to consider encroachments. But the responsibility for this error rested with the Grenville and not the Rockingham ministry, though, on the other hand, it must be acknowledged that Grenville's motive, in so doing, was of the best. He wished to give the colonies time to consider the matter, and to suggest another tax if this one was displeasing to them.

However, the arguments advanced against the repeal, and even

[1] The Objections to the Taxation of Our American Colonies, pp. 13, 14

[2] Annual Register, 1766, p. 44.

[3] New York Colonial Manuscripts, Brodhead, vii, p. 803, foot-note.

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the royal opposition, did not prevent its passage in the lower house, February 24, by a vote of 275 to 167. It was then carried to the House of Lords by over two hundred members of the lower house. "An instance of such a number going up with a single bill, has not been known in the memory of the oldest man." But as we have seen, in spite "of the *éclat* with which it was introduced into the upper house," the bill met with "a strong opposition there." Finally it passed its third reading, March 17, by a majority of 34, and three days after it received the royal assent. "An event that caused more universal joy throughout the British dominions, than perhaps any other that can be remembered." [1] The repeal was accompanied by the Declaratory Act,

> which in the preamble reflects on the American provincial legislatures for assuming, against law, the exclusive right of imposing taxes upon his Majesty's subjects in the colonies, and declares the Americans subordinate to . . . the crown and parliament of Great Britain.[2]

However, Benjamin Franklin prophesied truly before the House of Commons that "the resolutions of right will give them [the colonies] very little concern, if they are never attempted to be carried into practice." [3] The repeal was received in America with universal rejoicing. The attitude of the colonists seems to have been eminently practical.

From first to last the issue seems to have been economic, and the act was apparently proposed, passed, resisted, and repealed on commercial and economic grounds. Political theories were invoked, at every stage, in support of the conflicting economic interests, but none of these theories exercised decisive influence. The act was passed, not primarily to establish a closer connection between the mother country and her colonies, but to get a colonial revenue. It was resisted, not because of any theory of representation, but because the colonists were now economically strong enough to protest. It was repealed because their resistance affected disastrously the British colonial trade.

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[1] Annual Register, 1766, pp. 72, 46, 77.
[2] McPherson, Annals of Commerce, iii, 443. [3] Parliamentary History, xvi, 145.

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THE MONARCHOMACHS.

THEORIES OF POPULAR SOVEREIGNTY IN THE SIXTEENTH CENTURY.

WHEN in 1564 Calvin, the last of the quartette of great Reformers which included Luther, Zwingli and Melanchthon, passed away, the conditions and influences were clearly discernible which were to give character to the dramatic history of Western Europe during the next half-century — the period of widespread civil and international warfare in which difference in religious creed marked the line of division between the combatants. Philip II, well settled as successor of Charles V in Spain and the Netherlands, was manifesting his purpose to rule as absolute sovereign throughout all his possessions and to crush Protestantism wherever it existed. In England, France and Scotland three women, despite John Knox's frantic demonstration of the iniquity of such a thing,[1] held the reins of political power — Elizabeth, persecuting Calvinists as well as Catholics, yet already the mainstay of Protestantism against Philip; Catherine de' Medici, Catholic if anything by conviction, but wholly Machiavellian in her employment of religion to aid her in wielding the authority which rested nominally in her weak and incapable son, Charles IX; and finally, Mary, Queen of Scots, a passionate French girl, struggling by girlish methods — with "owlings and tears," as John Knox described it — to assert for herself some small measure of the rights of a sovereign against the violent nobles and the grim Presbyterians who denied to her either political or religious independence.

In Spain and in England there was no civil war during the period we are considering. Philip and Elizabeth alike knew how to assert and enhance a monarchic authority that should be secure against resistance. Absolutism in each case rested upon national feeling: the Spaniards submitted to Philip through pride in the greatness of his power, and the English supported Eliza-

[1] See his First Blast of the Trumpet against the Monstrous Regiment of Women.

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beth through fear of this same power. Autocracy was an undisputed fact in both countries, and by virtue of this condition, amid all the literary activity that characterized the period, political theory, as is usual in a time of absolutism, received practically no attention in England and Spain.[1] Quite different was the case in France, Scotland and the Netherlands. In each of these lands civil war was chronic during the last half of the sixteenth century, and from each arose striking contributions to political philosophy.

Though these wars were rather more political than religious in origin, they became in their development distinctly affairs of creed, and in each case the result turned upon the demarcation between Protestant and Catholic. Thus before the end of the sixteenth century the teachings of Luther and Calvin, despite the pacific leanings of the Reformers themselves, had by force of circumstances become a decisive factor in the political transformations of the chief powers of Europe. Protestantism in consequence assumed a militant aspect, and out of the turmoil developed theories of Christian duty in the state that bore little resemblance to the ancient ideals of passive obedience to established authority. To explain the proceedings and the triumphs of the French, the Scottish and the Dutch Calvinists, a thorough and aggressive overhauling of political dogma was required, and to some of the chief works by which this was effected our attention will now be directed.

The Vindiciæ contra Tyrannos.

The controversial literature which was produced in France by the religious wars included many violent anti-monarchic works by Catholic as well as by Protestant writers. The latter found their chief inspiration in the affair of St. Bartholomew's, the former in the abandonment of the League and the assassination of the Guises by Henry III. So far, however, as philosophical foundation and general principles were concerned, the Catholic and the Protestant debaters were substantially on common ground. Both alike justified resistance to a French king on the general principle that under certain circumstances a king became a tyrant

[1] Mariana, whose work is considered below, wrote just at the end of the reign of Philip II; and moreover, Mariana's work was conspicuously exceptional. For jurisprudence, however, this period was most glorious in Spain.

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and hence an outlaw, and on the particular principle that under the French constitution the monarch was subject to pretty well-defined limitations. Among the earliest and most influential demonstrations of both these principles were the two Huguenot works: *Franco-Gallia*, by the distinguished jurist Francis Hotoman, and *Vindiciæ contra Tyrannos*, published under the pseudonym of Stephanus Junius Brutus, and written probably by either Hubert Languet or Duplessis-Mornay. To these works, and especially the latter, our attention may be confined.[1]

The *Franco-Gallia*, published in 1574,[2] limited itself practically to the demonstration that France was never, in its constitutional origins, an absolute monarchy, but that, on the contrary, a general assembly of the nation had exercised the highest political powers throughout the early history of the Franks and during the Merovingian, the Carolingian and later periods. Hotoman's historical erudition was very great, and he massed with powerful effect the quotations that he gathered from the ancient chronicles to show that kings were chosen and deposed, legislation was enacted, and all the most important political business was transacted in the annual public council of the Franco-Gallican state. But the work did not go into the field of general political theory and affected the development of that system of thought only by suggesting and illustrating the applicability of the historical method to the questions at issue.

Of an entirely different character was the *Vindiciæ contra Tyrannos*, or *The Grounds of Rights against Tyrants*.[3] This embodied a most comprehensive treatment of the foundation of monarchic authority, and presented from the Protestant point of view a doctrine which radically transformed the attitude that had been taken under the instruction of the leading Reformers. The work is systematic as well as comprehensive, and the style exhibits that

[1] Prominent among the Catholic anti-monarchic works in France were: Boucher, De iusta Henrici III abdicatione; Rossæus, De iusta reipublicæ Christianæ in reges impios et hæreticos auctoritate. See Janet, Histoire de la science politique, vol. ii, pp. 82 *et seq.*; Treumann, Die Monarchomachen; Hallam, Literature of Europe, vol. ii, ch. iv.

[2] I have used an English translation published in London, 1738.

[3] Published in Latin in numerous editions. I have used that of 1595, annexed to a Latin version of Machiavelli's Prince.

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same glowing quality which marked the expression in St. Bernard, some centuries earlier, of the best traits of the Gallic temperament through the medium of the Latin language exquisitely handled.

The *Vindiciæ* answers four questions, of which the first is: Whether subjects are bound to obey a prince who enjoins what is contrary to the law of God? To this a negative answer is obvious, based on the positive injunction of the Scriptures, on the incidents of the procedure through which Saul was set up as king over Israel, and, incidentally, on the analogy of the feudal relationship, under which a vassal is bound to obey the superior rather than the inferior lord in case their commands are in conflict.[1] This answer is no different from that which had been given by Luther and Calvin.

The second question is not of the right to disobey, but of the right to resist: Whether it is lawful, and if so, to whom, in what manner, and to what extent, to resist a prince who is violating the law of God and laying waste the church?[2] The answer to this question presents formally and completely the theory of contract as determining the reciprocal rights and duties of God, king and people, and presents the theory in such form as to exhibit perfectly the two sources of this celebrated doctrine of politics — Old Testament history and the Roman law.

It is assumed at the outset, in the long familiar manner, that the relation of God to the people of Israel must be accepted as the type of his relation to every Christian people. But the controlling principle in the Old Dispensation was covenant or contract (*fœdus*). God chose Israel as his peculiar people and they on their part agreed to maintain his exclusive worship.[3] When royalty was set up this covenant was confirmed and renewed. On

[1] "Regés omnes Dei vassallos esse, omnino statuendum est . . . Si Deus est domini superioris loco, rex vassalli, quis non domino potius quam vassallo obediendum pronunciet? Si Deus hoc præcipit, rex contra, quis regi adversus Deum obsequium denegantem rebellem iudicet? . . . ergo non modo non tenemur obedire regi, contra legem Dei quid imperanti, verum etiam si obediamus, rebelles sumus."

[2] "An liceat resistere principi legem Dei violanti et ecclesiam Dei vastandi: quibus, quomodo et quatenus?"

[3] This contract was made by Israel at Ebal and Gerizim. Deut. xi, 29 and xxvii *et seq.*; Joshua, xxiv.

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this occasion the installation of monarchy involved two distinct contracts.[1] The first was that in which God, on the one hand, and the people and king on the other, engaged to maintain the ancient relation of the chosen people, as the church of God; the second was that to which the king and the people were the parties, the former agreeing to rule justly and the latter to obey him. It is under the first of these two contracts that the right of resistance to an impious prince is manifest. King and people are co-contractors to maintain the worship of God; each, therefore, is responsible for the fulfillment of the obligation, and each is authorized to restrain the other from violating it, since the innocent party would participate in the penalty for such violation. The author of the *Vindiciæ* elucidates the situation by copious references to the Roman law, and feels no incongruity in construing the relation of man to his Creator in terms of the rules of the market-place.[2] In the Old Testament history abundant instances are found in which the kings enforced upon the people conformity to their pledge to maintain the worship of God, and quite as many, on the other hand, in which the people constrained the kings to keep the covenant, or deposed them for the failure to do so.

But the right of the people thus demonstrated, to resist a king who is deviating from his duty to God, is not to be recognized as pertaining to the masses in general. Action can be taken only by the magistrates or the assemblies in whom the power of the

[1] II Kings, xi; II Chron. xxiii.

[2] The contract, he explains, is like that in which a creditor is secured by the joint and several obligations of two or more debtors. "Videtur Deus fecisse quod in dubiis nominibus creditores facere solent, ut plures in eandem summam obligentur." The fact that the people is a party to the covenant is evidence that the people is not regarded by God as in that servile condition to which the courtiers assign it; for according to the Digest a slave is incapable of contracting. But perhaps the most interesting instance of the author's preoccupation with the Roman law is to be found in his comments on the death of Saul. The king's destruction is explained, of course, as the penalty of his failure to keep the covenant with God. But why, the author asks, was his army, *i.e.* the people, also destroyed? It must have been because of their joint responsibility with him. For God would not avenge the sins of a king on his people, or of a father on the son. "Acerbum est, aiunt iurisconsulti, parentis scelera filiorum pœnis lui. Alieni sceleris quemquam pœnas pati iura non sinunt." That is, the author, in following he *iurisconsulti*, forgets God's own words, "visiting the iniquity of the fathers upon the children unto the third and fourth generation."

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people is organized. The multitude as a whole, "that monster with countless heads," is incapable of action; but in every well-organized realm there are princes, peers, patricians, nobles, *etc.*, normally constituting an assembly whose function is to see to the safety of the state and the church. Private citizens have no right of resistance save in support of the magnates, or by virtue of a special mandate from God.[1] The maintenance of religion, thus, is assigned to the estates of the realm, and the reference that the author makes to the deeds and doctrines of Constance and Basel indicates with sufficient clearness both the source and the conservative character of his theory.

The third question propounded in the *Vindiciæ* concerns the right of resistance on other than religious grounds: Whether and to what extent it is lawful to resist a prince who is oppressing and destroying the state?[2] The answer embodies a complete and systematic demonstration of popular sovereignty by divine right. Royalty, the argument runs, is merely an institution of convenience for the benefit of the people. God sanctions it to this end. A king never reigns in his own right; he is chosen by God and is installed by the consent of the people.[3] The history of the Israelites, of the ancient Greeks and Romans and of the French monarchy is shown to establish this principle. "No one is born a king; no king can exist *per se* or can reign without a people. But on the contrary, a people can exist *per se* and is prior to the king in time." Even where, as in France, the kingship is hereditary, the fundamental fact is that the choice of a king is voluntarily limited by the people to a single family.[4] That the essential function of royalty is to provide for the welfare of the people, is obvious from the nature of things. It is clear at the outset that men who are by nature free, impatient of subjection and born rather to com-

[1] But the claim to a special mandate must be most carefully established in order to justify action by a private citizen: "privatos ni extra ordinem ad id munus vocatos evidenter appareat, suapte auctoritate arma se capere nullo jure posse."

[2] "An et quatenus principi rempublicam aut opprimenti aut perdenti resistere liceat? Item quibus id et quomodo et quo iure permissum sit?"

[3] The whole argument consists in a formal proof that "electionem regis tribui Deo, constitutionem populo."

[4] "Qui vero ex ea stirpe proximi sunt non tam reges nascuntur quam fiunt; non tam reges quam regum candidati habentur."

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mand than to obey, have not deliberately chosen submission to another and renounced the law of their very nature, as it were, except for the sake of some great advantage.[1] Taking from Seneca the conception of a primeval "golden age," in which government was unnecessary and no one would have had a crown if he could have picked it up in the street, the author ascribes the origin of royalty to the necessity for leadership that arose when private property began to be recognized.[2] Monarchs were appointed to determine rights at home and to lead armies abroad; but they always remained subject, in their powers and actions, to the end for which they were created. Such being the original character of royalty, it is easy for the author to prove, as he does at length in most eloquent fashion, that the sweeping claims of power made by courtiers (*aulici nostri*) on behalf of kings, especially in reference to property and taxation, are baseless.[3]

The true principle on which to explain the whole relation of king to people is that of the second contract already referred to. This is entered upon between the king, on the one side, and the magnates, representing the whole people, on the other. The form is that of the Roman *stipulatio*, and the people has the part of *stipulator*, which, the author observes, is at law the more advantageous. The people asks of the king whether he will reign justly and according to law; he answers that he will. Thereupon the people pledges itself to yield faithful obedience so long as he keeps his promise. Thus the king contracts absolutely, the people conditionally; hence, the failure of the king to fulfill his undertaking frees the people *ipso iure* from their obligation. This compact completes the relationship which is inchoate in the first compact of king and people with God.

[1] "Primum sane palam est, homines natura liberos, servitutis impatientes, et ad imperandum magis quam ad parendum natos, non nisi magnæ cuiusdam utilitatis causa imperium alienum ultro elegisse, et suæ quasi naturæ legi, ut alienam ferrent, renunciasse."

[2] "Cum igitur *Meum* illud et *Tuum* orbem invasissent ac de rerum dominio inter cives, mox vero de finibus inter finitimos, bella exorirentur . . . reges creati sunt ut domi ius dicerent, foris vero exercitum ducerent."

[3] "Statuamus tandem oportet reges patrimonii regii non proprietarios, non fructuarios, sed administratores tantum esse. Cumque ita sit, multo sane minus aut rerum privatarum cuiusque aut rerum publicarum quæ ad singula municipia pertinent proprietatem usumfructumve sibi tribuere posse."

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In the first covenant or pact piety comes under the bond; in the second, justice. In the one the king promises dutifully to obey God; in the second, justly to rule the people; in the one, to provide for the glory of God, in the other, to maintain the welfare of the people. In the first the condition is, if you observe my law; in the second, if you secure to each his own. Failure to fulfill the first pact is punishable immediately by God; failure to fulfill the second, legitimately by the whole people, or by the magnates of the realm (*regni proceres*), who have undertaken to watch over the whole people.

That such is the true foundation of all royal governments is evident, the author holds, from the coronation pledges and oaths that have appeared throughout history;[1] but even without these, it would be manifest from nature itself. Hence the definition of tyranny is easy: the tyrant is he who willfully disregards or violates the contract through which alone monarchic dominion is legitimate. The usurper, or tyrant *absque titulo*, is an outlaw, and resistance to him is the right of every one, even the private citizen, under natural law, under the law of nations and under civil law. As to the tyrant *exercitio*, that is, the lawful king who becomes unjust and oppressive, the representatives of the people, having assured themselves that his offenses are not due to ignorance, unintentional error or mere incompetence, but are willful and deliberate, must constrain and, if necessary, depose him. Such is their duty; they stand toward the king in the position of co-guardian (*contutor*), to see that he does not violate his obligation to his ward (*pupillus*) the people.[2] The council of the realm is in the state what the general council is in the church; and as it has been universally admitted that the general council may depose a pope, even though he claims to be king of kings, with how much better warrant may the council of the realm depose a monarch. But private citizens cannot act in this matter. Resistance to the tyrant *exercitio* is the right only of the whole people,

[1] He dwells with special unction on the famous formula employed by the Justicia of Aragon in the installation of the king: "We, who are as good as you and are more powerful than you, choose you as king," *etc.*

[2] Here the author's anxiety to fortify his doctrine with legal principles leads to a change of base; there is a considerable difference between a *stipulator* and a *contutor*.

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with whom, as contrasted with individuals, the governmental compact is made; and the *populus universus* is represented in the one function as in the other by the great council of the magnates.

The fourth question debated in the *Vindiciæ* is: Whether it is the right and duty of princes to interfere in behalf of neighboring peoples who are oppressed on account of adherence to the true religion, or by any obvious tyranny?[1] The answer is affirmative on both branches of the question, and the ground is, in the one case the unity of the Christian church, in the other the unity of humanity, involving respectively duty to God and duty to one's neighbor. As the preceding questions are designed to justify the resistance of the Huguenots to Charles IX and Henry III, so this is designed to justify the action of Elizabeth of England and some of the Protestant princes of Germany in extending aid to the struggling Huguenots. And as the doctrine of popular sovereignty is the outcome of the one undertaking, so an enlightened view of international solidarity is strongly presented in the other.

George Buchanan.

The chief contribution to political theory which was due primarily to the Scottish Reformation was Buchanan's work *On the Law of the Realm among the Scots*,[2] published in 1579. John Knox's literary productions were multifarious and influential but they embodied no systematic treatment of politics. Buchanan, however, in the monograph named, undertook a scientific apology for the anti-monarchic proceedings of recent times, especially in Scotland, and dedicated the work, with grim Presbyterian satisfaction, to his royal ward, the young James VI. The central point of the whole subject, Buchanan assumed, was the distinction between king and tyrant, and the elaboration of this distinction is the general theme of the work.[3] In literary form as well as in content the monograph reflects very faithfully the humanistic erudition of which the author was so famous a master.

[1] "An iure possint aut debeant vicini principes auxilium ferre aliorum principum subditis, religionis purae causa afflictis aut manifesta tyrannide oppressis?"

[2] De iure regni apud Scotos. Appended to his Rerum Scoticarum historia, Aberdeen, 1762.

[3] *Cf.* secs. 6 and 7.

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Society and government originate, Buchanan holds, in the effort of men to escape from the primordial state of nature, when, as Polybius had described it, they lived the bestial life, without law and without fixed abodes.[1] The impulse to social life came partly from the sense of self-interest,[2] but rather more fundamentally from the instinct of association implanted by nature, or, better, by God. In society thus constituted the attribute essential to continuous existence is justice, as in the physical man it is health. The function of the king, therefore, is to maintain justice; and Buchanan throughout his work recurs again and again to the Platonic analogy of the true ruler and the skilled physician. But experience teaches men that justice is to be maintained rather by laws than by kings; hence it is that the rulers, originally unlimited in power, have with the development of enlightenment been always subject to law.[3] The maker of the law is the people, acting through a council of representatives chosen from all classes, and the interpreter of the law should be, not the king, but a body of independent judges. Nor is the king even to fill the gaps which are bound to appear in the law from time to time. His function in relation to the law is reduced to the minimum; and yet, Buchanan holds, his task is a most substantial and difficult one, — namely, to maintain the general *morale* of the state by setting to the citizens a high example of rational and virtuous living.[4]

Having evolved this rather vague and visionary concept of the king, the author bodies forth the figure of the tyrant, whose characteristics are expressed with all the rhetorical frenzy that classical literature has rendered conventional.[5] Essentially, however, the tyrant is a monarch who either has obtained his power without the consent of the people, or has exercised it otherwise than in

[1] . . . "tempus quoddam cum homines in tuguriis atque etiam antris habitarent ac sine legibus, sine certis sedibus palantes vagarentur." Sec. 8.

[2] He notes very acutely the danger of considering self-interest as the essential principle of social unity; for it may be adapted as well to the dissolution as to the consolidation of a community. *Cf.* sec. 9.

[3] "Regum insolentia legum fecit desiderium."

[4] Sec. 39.

[5] *Cf.* the description of the tyrant's life, with "horror," "metus," "faces Furiarum," "bellum," and all the rest of the familiar accompaniments.

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conformity to justice. In the former case he is a mere outlaw, an enemy of the race and at the mercy of every one; in the latter case he is by the nature of the office, as set forth above, liable to the people for violation of the law, which is the expression of justice as conceived by the given society. Buchanan controverts, with great skill and precision, the arguments drawn from the Scriptures for passive obedience to tyrants. St. Paul's injunction of submission to the higher powers is subjected to an especially careful interpretation, the substance of which is that the apostle was addressing those who were, like the Anabaptists, tending to disregard all social and political institutions, and that the command, therefore, referred to authority in general and not to the persons who at any time exercised the authority.[1] In view of this construction of the injunction to obedience, together with the express command of the Lord that the wicked be cut off and removed out of the midst of the people, Buchanan's conclusion is that a tyrant may be slain with impunity.[2]

The whole basis of the relation between king and people, particularly in the Scottish realm, is summed up, Buchanan holds, in the terms of a contract. A hereditary right to exercise royal power has been granted by the people, but it is not in human nature that such power be given and obedience pledged without some consideration,[3] and the consideration in this case is the promise to conform to justice and law in the exercise of the power. Violation of the terms of the pact by either party dissolves the bond and releases the other party from further obligations. But the king whose conduct has such an effect and who thus promotes the destruction of human society becomes a tyrant and an enemy of the people, and is therefore the object of a just war; and when such a war has once begun, it is lawful not only for the people as a whole but even for individuals to slay the enemy.

[1] Secs. 60–70. Paul, he says, wrote just what would be written now to the Christians living under the rule of the Turks — to submit to overwhelming force in the interest of peace, though without any implication that the Turkish power is in the true sense legitimate. Sec. 70.

[2] Secs. 53–56, 86.

[3] "Habet humanus animus sublime quiddam et generosum natura insitum ut nemini parere velit nisi utiliter imperanti; neque quicquam est valentius ad continendam humanam societatem quam beneficiorum vicissitudo." Sec. 55.

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Tyrannicide, thus, is in last resort a just device for maintaining the reign of law among a people. But before this last stage is reached there must be some way in which the people can proceed in seeking to confine the king to legal paths. Who shall call him to judgment? Buchanan's answer [1] to this crucial question lacks altogether the degree of clearness attained in the *Vindiciæ*. It must be, he says, the whole people, who alone are above the law. But what if there be, as is always the case, a difference of opinion among the people? Then the majority must decide. But what if the majority, from timidity or negligence or venality, stand by the king? Then they must be considered bad citizens, and the decision must be made by the good citizens, who will always be on the side of liberty and decency.

This very impotent conclusion exhibits the bankruptcy of his whole theory, as a practical scheme for judging institutions. The final judgment on the ultimate issue in the state is to rest with the "good" citizens; but there is no criterion for determining who are "good" citizens except that they decide this issue in a certain way. Buchanan indeed concedes the bankruptcy of his theory by the remark: "But even if the whole people (*tota plebs*) should dissent from proceeding against the king, this has nothing to do with our discussion; for we are inquiring not what will happen, but what can justly happen."

Johannes Althusius.

The systematic political doctrine which embodies most distinctly the influence of conditions in the Netherlands at the end of the sixteenth century is that of Althusius, the German jurist. This philosopher was forthirty-four years (1604–38) chief magistrate of Emden, an imperial city on the frontier of the new Dutch Republic, and in both practical activity and doctrinal conviction he manifested the fullest sympathy with the religious and political ideals of the people who were just freeing themselves from Spain. His work on political theory, *Systematic Politics, illus-*

[1] Secs. 76–80.

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trated by examples from Sacred and Profane History,[1] was published in its complete form in 1610, when the familiarity with the situation in the Netherlands had produced its fullest effect on the writer's mind.[2]

The salient features of Althusius's system are (1) exhaustive analysis and application of the contract theory in the explanation of social and political organization; (2) a clear and precise conception of sovereignty; (3) the ascription of sovereignty exclusively and immovably to the people; and (4) a conception of "people" which is incompatible with any idea of a "state" except that of a confederacy of lesser organized units.

Every species of associated life (*consociatio*) among human beings has its foundation, Althusius holds, in an agreement or contract to which the individuals are parties, and involves (1) a body of rules in accordance with which this society is to be conducted and (2) a relationship of command and obedience among the members for the administration of these rules. Human society in its most general aspect consists of a vast series of associations, rising with increasing degrees of complexity from the family, through the corporation, the commune, the province, to a climax in the state. These various species of social organization, with all their infinite sub-classes, are most diverse in their purposes, but all alike have the characteristic stated above: in each the given end conditions the administration of its affairs, and the essence of the corporate life inheres in the contract by which the individual members unite for the achievement of that end. Of the public associations, families unite to form communities, *viz.*, villages, counties, towns, cities;[3] these unite to form provinces; and the

[1] Politica methodice digesta, exemplis sacris et profanis illustrata. For the account of Althusius's life I have followed implicitly the exhaustive monograph of Gierke: Johannes Althusius und die Entwicklung der naturrechtlichen Staatstheorien, Breslau, 1880. And because I have been unable to procure a copy of Althusius's work, I have also followed Gierke's analysis of its contents. There is a useful analysis also in Bluntschli, Geschichte der neueren Staatswissenschaft, pp. 77 *et seq.*

[2] The work was dedicated to the Estates of Friesland, one of the United Provinces, and in the preface the revolt from Spain is glorified as a realization of the theory of the work.

[3] *Vici, pagi, oppida* and *civitates* are various forms of the lower political corporations.

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latter in turn unite with the cities or one another to form the highest type, the state (*politia*, *imperium*, *regnum*, *populus*, *respublica*). The state he defines as a general public association in which a number of cities and provinces, combining their possessions and their activities, contract to establish, maintain and defend the rights of the realm.[1] From this it follows — and Althusius emphasizes the point again and again — that the members of the state are not at all the individuals who reside within its limits, but the lesser corporations (cities and provinces) through whose contractual union it comes into existence.

Sovereignty (*maiestas*) is defined as the supreme and supereminent power of doing what pertains to the spiritual and bodily welfare of the members of the state. This power inheres, by the very nature of the association, in the people — the totality, that is, of the members of the state. Not each member is sovereign, but the members as an aggregate. Like all the anti-monarchic writers, Althusius illustrates his theory by the dictum of the Digest: "What is owed to a corporation is not owed to its individual members"; [2] and he ascribes sovereignty to the corporation, not to its members. But for the purpose of carrying out the functions of the state duties may be distributed among agents of the sovereign, and it is in this capacity alone that kings and magistrates exercise authority. These functionaries, whatever their power and jurisdiction in reference to the individuals, are by the very nature of the case themselves subject to the people as a whole. This appears not only from the nature of every association, in which the members unite for a certain end and necessarily retain control over the means to that end, but also from the nature of man himself; for all men being naturally free and equal, the exercise of authority by one over the rest must be based on the consent of the latter. Sovereign power, therefore, when properly understood, cannot conceivably be vested in any individual or group of individuals less than the whole people. It cannot be

[1] "Universalis publica consociatio, qua civitates et provinciæ plures ad ius regni mutua communicatione rerum et operarum, mutuis viribus et sumptibus habendum, constituendum, exercendum, et defendendum se obligant." Gierke, *op. cit.*, p. 25.

[2] "Quod universitati debetur singulis non debetur."

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conferred upon any one by the people, for it is inextricably involved in the essential conditions of social life; so long as there is a people, it must possess sovereignty. The duty of every officer of the state, then, is to submit to and enforce the laws in which the will of the sovereign people is embodied.

The officials of a state fall into two classes: first, what Althusius calls the "ephors"; second, the "chief magistrate" (*summus magistratus*). Under the first head he includes all the various orders and estates in provinces and cities whose function it is to act as a restraint on the chief magistrate. These various bodies, or individuals endowed with similar powers, are representatives of the whole people and are the organs for the expression of the sovereign will. In default of action by them on any point their authority devolves for exercise upon the assembly of the whole people. Under "chief magistrate" Althusius sets forth his conception of royal authority. The king is the executive of the people, to secure their interest and safety by carrying out the laws. His relation to the people is that of agent (*mandatarius*), and a contract between him and the people is perfected through his choice and coronation. He undertakes to govern in conformity to the fundamental laws of the land, and they agree to obey him. But like the author of the *Vindiciæ*, Althusius assigns to the people the advantageous rôle of *stipulator*, and maintains that the obligation of the king is absolute while that of the people is only conditional.

From this conception of the relation between king and people the familiar conclusions as to the tyrant follow. Deliberate violation of the law or dereliction in his duty transforms the chief magistrate into the tyrant, releases the people from the pledge of obedience, and calls into action the right of resistance and deposition[1] which is dormant so long as the pact is observed. The exercise of this right in its completeness pertains, however, only to the people in their sovereign totality, acting through the ephors; private individuals may merely interpose a passive resistance to unlawful commands and defend themselves in case their natural rights are assailed. But while to the ephors, as a body repre-

[1] "Ius resistentiæ et exauctorationis."

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senting the sovereign people, pertain the right and the duty of resisting, of expelling and of putting to death the tyrannical chief magistrate, to each member of the confederacy, acting through its particular ephors, belong the right and the duty, as an ultimate means of security against tyranny, of renouncing its connection with the rest and of associating itself with some other realm. A breach of the compact out of which the state arises, thus, justifies not only resistance but also secession; and Althusius regards this doctrine as a source of peculiar strength to the state, inasmuch as it provides an effective guarantee for the observance of the law of the land.[1]

The most cursory view of the system of Althusius reveals that it is a generalization from the constitution of the decaying German Empire, with adaptations to the recent conditions in the Netherlands. Apart from the framework of his system outlined above, there is much of sound and suggestive political science in his work. As illustrations may be cited his treatment of the functions and the forms of government. The ends of the social organization being twofold, namely, the spiritual and the secular welfare of the members, the functions of the government are to correspond. First, it must supervise religion, worship, morals and education; second, it must prescribe general rules of social conduct, to be enforced by penalties, and in addition must carry on a wide range of concrete activities for the positive promotion of the general welfare, including supervision of trade, commerce, coinage, weights and measures, the administration of the public revenues and property, and the protection of the people from internal perils and external force. Althusius is a thorough Calvinist, and his scheme of governmental functions includes the maintenance of a state church, with a school system under its direction, and a far-reaching censorship of morals.

As to the forms of state, he rejects entirely the ancient classification and holds, logically enough, that since by the very nature of the state sovereignty must be in the people, there can be no more than one form of state. Government, however, may be monarchic or polyarchic, according as the chief magistrate is an

[1] Gierke, *op. cit.*, p. 35.

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individual or an assembly. Yet, Althusius points out, it is scarcely conceivable that any purely monarchic or purely polyarchic government could exist; there will always be in a monarchy various councils and assemblies to share the responsibilities of the chief, just as there will always be in a polyarchy a concentration of functions in some individual for actual execution. Hence, he concludes, every government is normally a mixed form, and the names monarchy, aristocracy and democracy have real significance only as designating the most important element in each specific case.

Juan de Mariana.

While the bulk of the anti-monarchic doctrine of the period we are considering had its inspiration in the controversies between Protestant subjects and Catholic rulers, one very notable exposition of this doctrine was produced in a kingdom where the Catholic faith and royal absolutism had practically undisputed sway, and by an author who was identified with the society that most staunchly upheld the cause of the old worship against the Reformers. I refer to the work of the Spanish Jesuit, Juan de Mariana, entitled *On Kingship and the Education of a King*,[1] published in 1599 and dedicated to Philip III, of Spain. The extreme views embodied in this work as to the limitations upon royal power probably represent the influence of the extensive researches to which the author had long devoted himself in connection with his great *History of Spain;*[2] like Hotoman, in France, he had been impressed with the relatively large part played by the Estates in the growth of monarchy.

In developing his conception of the king, Mariana starts from the natural state of men, which he describes with some fullness on the general lines of Polybius's idea. In the beginning men lived like wild animals, following instinct in the procurement of food and the propagation of their kind, bound by no law and subject to no authority. The life had its advantages: nature furnished food and drink and shelter, through fruits and streams and caves;

[1] De rege, et regis institutione. I have used the edition of Mainz, 1605.

[2] Historiæ de rebus Hispaniæ, first published in 1592.

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cheating, lying, avarice and ambition were unknown, and the cares of private property had not made their appearance; but, on the other hand, man's wants were greater and more varied than those of other animals and at the same time he was less adapted than they [1] to the protection of himself and his young from the dangers that incessantly arose from both animate and inanimate forces around him. It was to overcome these disadvantages that men grouped themselves together and submitted to the leadership of some one who displayed especial capacity in promoting their welfare. This was the origin of civil society, with all its blessings to the race. The timidity and weakness of men were the divinely implanted qualities through which the rights of humanity were to be developed.[2]

The earliest and natural form of government, thus, was the rule of one, recognized as the wisest and unrestrained by anything like law. But the restraints of law were soon imposed because, in the first place, the wisdom and impartiality of the monarch began to be questioned, and in the second place, the evil passions of men, growing stronger *pari passu* with the increase in knowledge, required some general system of restraint. Laws were at first probably very few and very simple; but with time they increased in number and complexity till now, Mariana mournfully observes, "we are as much burdened by laws as by vices." [3] The existence of law, however, by the side of the personal ruler he regards as of the essence of government, and on this assumption he discusses the various forms of authority that have arisen among men since the first natural monarchy. Royalty is, on the whole, his preference. Democracy is plausible; but, he points out, fol-

[1] Mariana dwells especially on the helplessness of the human infant as compared with the young of other animals. De rege, bk. i, ch. i.

[2] "Sic ex multarum rerum indigentia, ex metu et conscientia fragilitatis, iura humanitatis (per quam homines sumus) et civilis societas, qua bene beateque vivitur, nata sunt. . . . Omnis hominis ratio ex eo maxime pendet, quod nudus fragilisque nascitur, quod alieno præsidio indiget atque alienis opibus adiuvari opus habet." *Ibid.* bk. i, ch. i.

[3] "Illud etiam fit verisimile, leges initio paucissimas exstitisse easque paucis et apertis verbis nulla explicatione eguisse. Legum multitudinem tempus et malitia invexit tantum ut iam non minus legibus quam vitiis laboremus." *Ibid.* bk. i, ch. ii.

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lowing Pliny, wherever power is in a group of men, the less wise part will always prevail, "for the votes are not weighed but merely counted." [1] Monarchy restrained by law has less evils and greater efficiency than the other forms. It is likely, however, to degenerate into tyranny, which Mariana, following Aristotle, regards as consisting in monarchic rule exercised for the good of the ruler rather than the good of the subject. Against this species of government Mariana directs his celebrated and very radical theory of the right of tyrannicide, under which are included the less drastic forms of resistance.[2]

The broad grounds on which he bases the justification of resistance are, first, the sovereignty of the people, and second, the common sense of mankind, as exhibited in history. The royal power (*regia potestas*) has its source in a grant by the people (*respublica, populus*); but in making this grant of certain rights (*iura potestatis*) the people reserves to itself even greater rights, namely, those of taxation and legislation. The people is, in other words, above the monarch. Furthermore, the familiar examples of the deposition and execution of tyrants by peoples in all parts of the world tell plainly of the belief that has universally prevailed, and this universal belief is properly to be taken as the voice of nature in our souls.[3] Hence the monarch who is clearly ruining the state is justly liable to removal by the people. Care must be taken in the process so that no greater disturbance than is necessary ensue. The assembly of the people must warn the offender to reform, and only upon his refusal must proceed to extremities. When, however, the people through its assembly has spoken, then, and not till then, may the private individual justly stay the tyrant. If, however, as is likely to be the case, the assembly is not permitted to meet or to act, the private citizen is justified in killing the tyrant at discretion.[4]

[1] . . . "in omni deliberatione pars sanior a peiori superabitur; neque enim suffragia ponderantur sed numerantur." *Ibid.* bk. i, ch. 2. *Cf.* Pliny, bk. ii, epist. 12.

[2] This is the content of book i, chapter 6: "An tyrannum opprimere fas est?"

[3] "Et est communis sensus quasi quædam naturæ vox mentibus nostris indita, auribus insonans lex, qua a turpi honestum secernimus."

[4] But giving him poison to drink is an unchristian method of assassination. It makes the victim in a sense a suicide, and suicide is contrary to divine and nat-

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Mariana is fully aware of the dangers that are latent in this doctrine. He concedes that it practically leaves to individual judgment the decision as to who shall be considered a tyrant and thus strikes at the root of all political authority. But still he considers the principle on the whole a useful one. Men are in general strongly disposed to submit to tyranny for the sake of quiet, and very few tyrants get their deserts; it is therefore a salutary restraint upon princes to inculcate the belief that the right to assassinate them if they become oppressive belongs to every one, and that the authority of the people is above their authority.[1]

But the normal organization of monarchy includes an organ of the popular will in the Estates of the Realm — the bishops, nobles and representatives (*procuratores*) of the cities. This assembly is what Mariana calls the "state" (*respublica*) and the "people" (*populus*), and its superiority in power to the king is established in a full examination of the relative merits of absolute and limited monarchy.[2] The Estates are the formulator and guarantor of the fundamental law of the land, by which the monarch is circumscribed. In their control rest all matters of taxation, of succession to the throne, of the established religion of the state. The prince is in no sense *legibus solutus;* besides the restraint imposed by these fundamental laws, he is under a divine and natural obligation to submit to the will of God, and even to public opinion (*populari etiam civium opinione*). Mariana naturally dwells somewhat insistently on the supreme importance of the ecclesiastical element in the Estates and of ecclesiastical interests in the policy of the king; but his emphasis on these points is not stronger than that of the Protestant controversialists, while his general attitude toward absolutism is entirely in harmony with theirs. He mourns as sincerely over the decline of the Estates in Spain as Hotoman mourns over the like decline in France.

ural law. Mariana suggests however, that poison would be unobjectionable if it could be administered without the participation of the victim in the procedure, as, for example, if his clothing could be saturated with some deadly substance which would be absorbed through the skin. For this curious discussion see chapter vii: "An liceat tyrannum veneno occidere."

[1] "Quod caput est, sit principi persuasum totius reipublicæ maiorem quam ipsius unius auctoritatem esse." De rege, bk. i, ch. vi.

[2] Book i, chapter viii: "Reipublicæ an regis maior potestas sit?"

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One book [1] of the *De Rege* is devoted to a discussion of practical questions of policy and administration — of the aims and methods that should prevail in the royal activity. There is much sound judgment displayed in this discussion, and also at times something of that peculiar quality which gave Machiavelli a doubtful reputation. The question as to whether, in the choice of officers of the state, moral character should be a determining consideration, is answered affirmatively as to ecclesiastics and judges and negatively as to military and minor administrative positions. Admirable chapters on taxation and money respectively set forth sound principles of economics, and exhibit the disastrous effects of debasement of the coinage. Poor relief is treated at length, and the functions of the ecclesiastical institutions in the case of paupers are rationally defended. The "tramp" question even receives much attention [2] — a fact which, taken in connection with the discussion of analogous questions, indicates that Spain was in a very demoralized condition from the social and economic point of view. Mariana's discussion of military policy likewise suggests a consciousness of something wrong in Spanish affairs, possibly a reflection of the failures in the Netherlands and against England. Apart, however, from the particular references to Spanish affairs, his general doctrine is, like that of Machiavelli,[3] that war is inevitable, that standing armies therefore are indispensable, and that the maintenance of domestic peace is conditioned on incessant warfare abroad. This, then, must be the royal policy. A just cause can generally be found, but whether it can be or not, keep the soldiers busy with incursions into foreign lands, with pillaging of unrighteous cities, with pure piracy and brigandage if necessary, and thus relieve the citizens of the burden of supporting them.[4]

[1] Book iii. The second book treats of the education of a prince.

[2] Book iii, chapter xiv.

[3] *Cf.* Dunning, Political Theories, Ancient and Mediæval, p 321.

[4] "Contendo pacem domesticam diu stare non posse nisi arma cum externis exerceantur. Neque enim aut causa iusta deesse potest aut militum [milites ?] otio marcescere pati debemus; sed potius mari terraque praedas agere, in alienos fines irrumpere, urbes præsertim impiorum diripiendas militi tradere." Bk. iii, ch. v.

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The Machiavellian spirit of which this doctrine is an example, is manifest also, though in a less brutal form, in the chapter on the wisdom (*prudentia*) of the king. The supreme art of royalty is to maintain the good will of the subjects.[1] Hope and fear are the chief means. Not so much actual rewards and punishments, but the expectation of them, is effective. If a subject seeks what it is wrong to give, do not deny him so flatly as to extinguish hope. Let no one leave the royal presence in sadness. Unpleasant duties must be left to subordinates; acts of grace should be performed by the king in person.[2] Let popular tumults be suppressed by the most ruthless officials, and then visit upon the latter the severest penalties for any dereliction on their part that can possibly be discovered; "thus all the wickedness will be punished and yet the people will remain well-disposed toward the prince." "Nothing," says Mariana, "is more effective with kings or subjects than self-interest, nor can there be any lasting compacts or friendships save where there is hope of some advantage."[3] Dissimulation, also, is indispensable to a monarch. Yet Mariana will not admit in principle the right of the king to lie or to deceive; only, he will get into serious difficulties unless he conceals his purposes and maintains a benignant aspect when conditions are most troublesome.[4]

These doctrines in the field of political ethics give a tone to Mariana's work that distinguishes it from those of the Protestant advocates of popular sovereignty whom we have considered. Calvinistic standards of morality were notoriously of a more rigid and austere type than those of the old creed, and Calvinistic theorists, whatever was true of their practice, in general clung pretty literally to the Decalogue in their code for kings. Mariana's teachings manifest a tendency toward that lax interpretation of

[1] "Debet rex, nisi id nomen exuat, volentibus imperare."

[2] Both Aristotle and Machiavelli had set forth this dictate of policy.

[3] "Sit animo fixum, nulla re tum principes tum privatos moveri magis quam utilitate: neque ulla firma fœdera putet, nullas amicitias, unde nihil speratur commodi." Bk. iii, ch. xv.

[4] "Mentiri et fallere numquam principi concedam; sed nisi consilia tegere didicerit, omnibus etiam noxiis benignitatem ostentare, multis sæpe difficultatibus implicabitur." *Ibid.*

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duty which came to be associated with the name of the society to which he belonged, the Jesuits.

General Influence of the Anti-Monarchic Theories.

The theories which have just been described injected into political philosophy and made the central topics of its discussions concepts which dominated the field until well into the nineteenth century. The state of nature, the contractual origin of society and government and the indefeasible sovereignty of the people became henceforth dogmas that might or might not be accepted, but could never be ignored by any serious thinker on politics. That these concepts were absolutely novel at this time is of course not true. The literature of antiquity abounds in allusions to the condition of man prior to any social life, and these allusions, brought prominently before the intellectual consciousness of the times through the revival of letters, contributed much to promote discussion of the state of nature. In like manner the idea of contract and consent as the basis of political authority owed its adoption not only to the close study of the ancient Jewish system which the Reformation had brought about, but also, as shown particularly in the *Vindiciæ contra Tyrannos* and in the writings of Althusius, by the adaptation to political debate of the doctrines of the Roman private law. The system of Marsiglio and Cusanus, which had been adopted freely by Luther and the other great Reformers in ecclesiastical polity, was as freely applied by their successors in political questions. In the spirit, if not in the precise words of Cusanus, it was laid down that since all men are by nature equal, the authority of any one over another must rest wholly on agreement and consent; and beyond where Cusanus had gone, the form and duration of this agreement and consent were deduced from the principles of commercial contract. Now for the first time explicitly and with elaboration the maxims of the Stoic jurists[1] of Rome were made the chief foundation of speculations about the state and government.

The religious wars at the end of the sixteenth century brought

[1] *Cf.* Political Theories, Ancient and Mediæval, pp. 128, 273 *et seq.*

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fully into operation in secular politics the influences which were supreme in ecclesiastical politics at the beginning of the fifteenth century.[1] As Gerson and the conciliar party sought to destroy the autocracy of the pope and substitute the sovereignty of the General Council, so Languet and Buchanan and the rest sought to destroy the autocracy of the king and substitute the sovereignty of the Estates of the Realm. For in each of the theories described above, the "people" to whom sovereignty is ascribed is interpreted more or less precisely to mean the assembly of the magnates. As the conciliar party had consciously sought to establish a government by the great prelates, so the anti-monarchic party sought to establish a government by the secular nobles. In a large sense the theory of popular sovereignty at this time was not revolutionary, but reactionary; it presented the familiar phenomenon of a philosophy based upon a system of institutions that was passing away. For the practical demand of the assailants of monarchy was that the feudal aristocracy should resume the sway which the monarchs were taking from its hands. The "sovereignty of the people," as set forth especially by Althusius, was wholly opposed to the consolidation that was going on and that could be perfected only by the national monarchs. Hence the theories that we have been considering failed of realization in the principal kingdoms,[2] and the absolute monarchy continued its work. Only when a new content was put into the old formula of "popular sovereignty" was the dogma properly adaptable to revolutionary propaganda.

In many details of their theory the anti-monarchic writers that we have noticed differed from one another, and the shades of doctrine on a variety of subjects were manifold. But one feature stands out clear and conspicuous in all the theories, namely, the idea that political authority is derived by its possessor not from a divine but from a human source. The construction put by Luther and Calvin on the teachings of the Scriptures in this respect is dropped, and submission to any particular ruler as the representative of God's will ceases to be the presumptive duty of a Christian.

[1] Political Theories, Ancient and Mediæval, pp. 266 *et seq.*

[2] Scotland remained a constitutional kingdom and the United Netherlands an aristocratic republic, but France, Spain and England were absolute monarchies.

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The law and the contract intervene between God and the monarch, and the royal acts are to be subjected to the test of mere human reason. On this ground the Protestants now unite with the Catholic followers of St. Thomas and deny to secular rulers that immediate divine right, and hence that ever extending power, which the early stages of the Reformation had tended to insure to them. Calvinists and Jesuits agree in at least the one contention, that despotism has no sanction from heaven.

But while this much of the anti-monarchic doctrine is clear, there is much vagueness and conflict in the treatment of many points of theoretical importance. "The people," which is at the basis of so much of their disputation, is a somewhat elusive concept. In one place the term signifies the classes which constitute the Estates of the Realm, in another the Estates as organized in their assembly, in another something which the Estates represent: but in no case will it be conceded that the population as a whole, conceived as a multitude of individuals, is to be recognized as an embodiment of political power. Again, in the idea of the contract, the parties are in every case assumed to be the people and the king; but only Althusius gives any adequate idea as to the process by which a people comes to exist.[1] The contract dealt with by all the rest is, in short, what has come to be called the civil or governmental contract, as distinct from the social contract. It was hardly strange that in the stress of controversy something less than exact theoretical analysis should have characterized the thinking of the earnest men who were in the heart of the fray. They sought and in a measure achieved certain concrete ends, but it was left for a series of thinkers who could bring more of philosophy and less of passion to the task, to formulate with precision the definitions and the dogmas which were of the highest significance in the political theory of the times.

WM. A. DUNNING.

[1] Mariana starts from the isolated man, but the steps by which a number of these become a people, capable of expressing a corporate will, are not indicated.

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REVIEWS.

American Tariff Controversies in the Nineteenth Century. By EDWARD STANWOOD. Boston and New York, Houghton, Mifflin and Company, 1903. — Two vols., 410, 417 pp.

Mr. Stanwood's title does not accurately describe his book. He gives a history not so much of tariff controversies as of tariff legislation. In his introductory chapter, he tells the reader not to expect critical analysis of the writings of Carey, List, D. A. Wells, or Horace Greeley; and this we can readily dispense with. But there is also little attempt to follow the broad fluctuations in the state of public opinion on the controversy. We have, indeed, a great many pages giving abstracts of various speeches and documents. Hamilton's Report is summarised through twenty pages; the important parts of Walker's Report of 1846 are reprinted in full; and there are lengthy abstracts of the speeches of Clay, Webster and others on the tariff bills of 1820 and 1824. It is significant that the documents and debates of the period since the Civil War receive practically no attention from Mr. Stanwood. The reason may be that the vast bulk of the matter which is printed in the Congressional *Globe* and *Record* defied analysis or selection; but it may be suspected that our author concluded, as do most readers of the tariff speeches of later days, that these are chiefly buncombe for distribution among constituents, not expressions of any real conviction or matured opinion. Even for the earlier period there is little, beyond such summaries as have just been mentioned, on the shifts in the general debate on the tariff question. There is a long chapter on the constitutional question, in which Mr. Stanwood finds it not difficult to prove that Congress has the power to levy duties that protect. But in the main the volumes are confined to the legislative history of tariff bills and acts: to the votes and manœuvres in Congress, the connection with the general political situation, the intrigues and combinations that affected the various measures, and the parts played by the presidents, secretaries, chairmen of committees and other political leaders in shaping and enacting them.

This, his main task, Mr. Stanwood has done excellently. The narrative is full, accurate and fair-minded. Mr. Stanwood is a convinced protectionist, and from the outset frankly states his opinions. But this does not prevent him from pointing out with equal frankness how often the tariff question has been dealt with as part of the game of poli-

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tics. The legislative history, not only of such tariffs as those of 1842 and 1846, but of the most recent acts — those of 1890, 1894, 1897 — is told in a manner to demonstrate how far removed we have been from any well-weighed or judicial course of procedure. The narrative of the three last-named acts is perhaps the best and most candid part of the book. The earlier tariff acts, especially those before 1860, have received their share of attention in the general histories; but on the McKinley act of 1890, the Wilson act of 1894, and the Dingley act of 1897, Mr. Stanwood had a free field, and his analysis of their curious congressional history is a contribution of real value. As regards the tariff legislation of the Civil War, he frankly explains that

> whoever could devise or discover a new object of taxation, or who was courageous enough to advocate an increase of duty on any article already taxed, was regarded as a public benefactor, and the suggestion was adopted forthwith. As for the manufacturers, they had only to declare what rate of duty they deemed essential, and that rate was accorded to them.

The course of legislation in the period after the war is rightly described as "haphazard action, with no consistent plan," missing the opportunity to establish "a broad, comprehensive, far-seeing policy." It is to Mr. Stanwood's credit also that he speaks well of Democratic leaders, such as Mr. Cleveland and the late Mr. Wilson, whose principles he deems unsound. Mr. Cleveland receives deserved praise for his "splendid courage" in bringing the tariff issue to the fore in his message of 1887; and Mr. Wilson is described with no less generous recognition.

Mr. Stanwood, having given so much space to the history of legislation, has left himself very little for the discussion of the economic consequences of legislation. Indeed, his labor evidently has been put chiefly on the debates in Congress, and the materials closely connected with these. The economic history of the country, and that of the particular industries most affected by the tariff, receive scant attention. Clearly these are subjects much more important than legislative and political detail for reaching an opinion on the merits of the controversy; but they call for the examination of a huge mass of scattered and mostly unsatisfactory material. If we are ever to know all that can be known and is worth knowing on the economic effects of protection, there must be a great deal of preliminary monographic work. Mr. Stanwood's book adds nothing to our knowledge here, and indeed, hardly affects to do so. There are indeed some passages on the effect of this and that tariff act; and the tone of these passages is in general

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reasonable and fair-minded. Thus Mr. Stanwood remarks, when beginning his discussion of the period since 1890, that "the importance of the tariff was grossly exaggerated by the disputants on both sides;" and, later, that "the act of 1897 did not make prosperity possible nor did it create prosperity" — a simple statement of obvious truth, but one which in these days it is refreshing to hear from a staunch protectionist. Mr. Stanwood adds that "undoubtedly it [the Dingley tariff act] added largely to the benefits the country would have enjoyed had the act of 1894 been undisturbed." But here the word "undoubtedly" only means that Mr. Stanwood has an *a priori* conviction that the beneficial effects must have ensued; whereas the free trader is no less convinced on his own general principles that harmful effects must have ensued; and neither, in the opinion of the present reviewer, can possibly prove his conclusion by evidence for the particular case.

Like most writers on the question, Mr. Stanwood is disposed to believe that a connection can be shown between tariff legislation and the periodic alternations of prosperity and depression; especially when a period of prosperity follows the kind of legislation he approves. He ascribes credit to the Dingley act for the revival of industry after 1897, though in the moderate terms just noted. So the prosperity of the period after 1828, though "not caused solely by the tariff," is held forth as a vindication of the wisdom of the high duties then enacted. For the act of 1842 much more is said. It was the *vera causa* of the good times that followed: "no other cause is assignable as having produced that effect." Of course this calls for some consideration of the contrary experience after 1846, when the lower tariff act was also followed by a period of prosperity. Here, however, Mr. Stanwood finds that other causes were at work, and attributes much effect to the Californian gold supplies. *Post hoc, propter hoc* is an extremely treacherous mode of reasoning in all economic discussion; and certainly its use is fallacious in ascribing bad and good times to low and high tariffs. The causes of these oscillations are deep-seated in the complex mechanism of modern industry. Some particular event, such as a tariff act, or a silver act, or (to cite a very modern instance) legal proceedings against a railroad combination, may give things a start up grade or down, and this is forthwith regarded by many people as the cause of prosperity or depression; though no cool-headed observer can help seeing that the effect was due mainly to the underlying industrial conditions. So far as protection and free trade are concerned, such discussion misses the point of the whole controversy. The real question at issue is one of production. Which mode of directing a country's

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industry brings the largest measure of what Professor Marshall happily calls the national dividend? The regular flow of that dividend and, in some degree probably, its abundance are affected by the oscillations of trade. But the commanding factor in the long run is the effective organization and direction of the productive apparatus. Whether restraints on importation make that apparatus more effective or less is a question we can answer chiefly, if not solely, by general reasoning as to the working of the institution of private property and the effects of the geographical division of labor.

But all such discussion lies outside the scope of Mr. Stanwood's book, and what he says incidentally on the strictly economic problem is interesting chiefly as showing the point of view of an intelligent and fair-minded protectionist. One may differ with him on these matters, and yet be grateful for his narrative of the tortuous history of tariff legislation.

F. W. Taussig.

Harvard University.

The Truth about the Trusts. By John Moody. New York, The Moody Publishing Company, 1904. — xxxii, 514 pp.

Mr. Moody believes thoroughly in the trust. It is, he says, "the natural outcome or evolution of societary conditions and ethical standards which are recognized and established among men to-day as being necessary elements in the development of civilization" (p. 494). Though the form of expression is vague we readily recognize in this sentence the familiar claim of the trust apologist: that given the existing social and industrial conditions, the progress of consolidation is inevitable. Mr. Moody's originality appears in the grounds he advances for regarding the trust as a beneficent institution. He casts aside the stock argument that the consolidation of industry results in higher wages and lower prices. He scorns the idea that the trust is not a monopoly. No brilliant career is open to the trust which has to rely upon mere competitive efficiency. Monopoly alone can explain the trust movement; the achievement of monopoly alone justifies it. But it is a huge mistake to regard monopoly as reprehensible — a mistake due wholly to the mischievous activity of the demagogue and the socialist. Monopoly is in reality "a social product which exists with the consent of society, and men in business take advantage of it where found, just as they take advantage of any other factor for achieving their end" (p. xvi). Men desire monopoly just as they desire lands or factories

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or any other sources of income. It is a socialistic meddling with a man's natural rights to prevent him from satisfying so legitimate a desire. Moreover, "business could not be carried on under present high social conditions and ethical standards without at least a tacit recognition of the legitimacy of the monopoly factor" (p. 495). The relentless competitive warfare of the kind lauded by the Manchester school has disappeared before our higher ethical standards. Mr. Moody quotes approvingly from "the manager of one of our larger trusts":

> Where formerly the small producer competed to reduce his costs and undersell his competitors by the ordinary means of great economy and superior efficiency, he has now gone beyond that point . . . The advantages he now seeks are not so crude. They consist in going to the root of things, in acquiring and dominating the sources of supply and raw material; in controlling shipping rights of way; in securing exclusive benefits, rebates on large shipments, beneficial legislation, *etc.* [p. xvii].

Mr. Moody admits that competition of this nature may oblige men sometimes "to break through the lines of abstract justice." "But where they do this," he adds optimistically, "it appears that society is apt to endorse these methods on the general ground that the end justifies the means." An excellent illustration of the methods referred to is found in his description of the copper trust. On page 34 we read that this trust attempted to elect to the supreme court of Montana a candidate who would be its tool in blackmailing litigation against its rival; that it tried to bribe the judiciary of the state, and endeavored to secure the impeachment of a judge whose decisions had been unfavorable to it. The end which it sought to attain is described on page 43 :

> [The trust] aimed at *and saw the necessity for acquiring a monopoly of the copper production of the world;*[1] the purpose being to restrict the production to what might be the legitimate demand at about twenty-two cents per pound. [The normal price was about twelve cents.] Could the plan have been carried to success and a practical monopoly secured, instead of being criticized and condemned on every hand, the copper trust would, in the course of time (if not by this time), come to be looked upon as one of the most brilliant demonstrations of modern business mastery and success.

[1] The italics are the author's.

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Unfortunately, our present "high ethical standards and social conditions" were not sufficiently exalted to permit of the attainment of this worthy end through such appropriate means. But the author suggests that we may yet hope for the realization of the copper trust dream, and in no very remote future.

To his views on the significance of the trust movement, Mr. Moody devotes comparatively few pages. The great bulk of the work consists of a collection of facts relating to the organization and history of existing trusts, with succinct analyses of their elements of strength or weakness. Part i of the work describes at considerable length the "Greater Industrial Trusts" — the copper, smelters', sugar, tobacco, shipping, oil and steel trusts. The material presented consists chiefly in excerpts from the best contemporary financial literature, and while its chief interest is for the investor, it contains much that is of importance for the economist and political scientist. The second part describes more briefly eighty-five of the lesser trusts. In part iii, entitled "Industrial Trusts in Process of Reorganization or Readjustment," we have a concise account of the disgraceful methods of finance employed in such concerns as the ship-building and the asphalt trusts. Parts iv and v are respectively devoted to a discussion of the franchise trusts and the more important railway groups. Part vi gives statistics for all trusts. The figures represent, as the author with apparent justice claims, "the most thorough and accurate list of industrial trusts ever published in this country."

Mr. Moody's point of view is consistently that of the securities market; and this fact explains both the excellence and the deficiencies of his work. He apparently lives in a world inhabited exclusively by promoters, underwriters, brokers and occasional investors; the last class being, however, of minor importance. Whatever promoters, underwriters and brokers desire, the author regards as their natural right; whatever furthers their interests makes for the general welfare. To strike at their privilege of exploiting the public is "to war against all mankind."

The data which Mr. Moody has collected, and which make up the bulk of his work, are of the greatest interest and importance to every student of the trust problem. The comparatively brief controversial portion of the book contains so much "truth about the trusts," and sets it forth so frankly, that his work may well be ranked among the most important contributions to the anti-trust literature.

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Trust Finance. By E. S. MEADE. New York, D. Appleton and Company, 1903. — 387 pp.

Professor Meade's book is a distinctly valuable contribution to current knowledge, because it deals, in a practical way, with problems which happen to have been very lately projected into the foreground of controversy. The Supreme Court's Northern Securities decision of March 14 has revived, with particularly urgent emphasis, discussion of the "pool," the "holding company," the "promoter," and the trust as factors in the investment markets. Not only the general theory of railway and industrial combinations, but their *modus operandi*, their bearing on the money markets, the possibility of reconstructing them when they have been dismantled by statutes and decisions, are debated with varying conclusions. A very great deal of practical information and up-to-date exposition on the subject will be found in the book before us.

The situation which confronted many manufacturers in the free field of competition, five or six years ago, and which, taking advantage of the public's appetite for experiments in investment issues, resulted in the trusts of 1899, 1900, and 1901, is set forth with reasonable emphasis by Professor Meade. The movement was an evolution from the general understanding of a group of manufacturers to a "pool" with a heavy money penalty for violation of agreements, and from that to the "holding company." Professor Meade's book, having been published, not only before the Supreme Court's decision against the Northern Securities merger, but before even the St. Paul circuit court's decision on the same lines in April, 1903, naturally cannot bring this phase of the subject up to date.

It would, in fact, be impossible, even at the present time, to forecast with assurance the future of the trust in the form of the holding company. One prediction, popular at this moment among people observant of the course of events, is that the dissolution of the Northern merger will be followed by consolidation on a still more intimate basis. Others reason that the suit against the Northern Securities was provoked by the peculiarly flagrant effort of that merger to stifle competition, and that the decision will not necessarily apply to other holding companies. This second theory has been encouraged, not only by the singular division of the Supreme Court which left the balance of opinion in Justice Brewer's hands, with his plain intimation that other cases were not necessarily prejudged by this, but also by the attorney-general's more or less ambiguous statement that the prosecuting officers

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of the government would not "run amuck." These facts encourage such holding companies as the Pennsylvania Company, owned by the railway of that name and formed in 1870 to buy stocks of other railways, and the Rock Island company, established in 1902 to control other railways and to diminish the risk of changes in existing ownership. These concerns have not challenged public scrutiny by any such frank avowal as that made by the Northern Securities Company, which compelled its counsel to admit, in reply to an inquiry from the court, that the merger scheme might be so extended as to control all the railways in the United States.

It is not yet clear, then, whether we are or are not to dispense with the company which merely holds the stock of competing corporations. A singular fact, to which Professor Meade does not draw attention, is that the holding company device, as actually applied, embodies two distinct and in some ways opposing theories. The purpose of the Northern Securities was admitted by Mr. Morgan, in open court, to be the establishment of a concern with capital so large that no one interest could acquire control. The Rock Island and Metropolitan Securities holding companies are as plainly recognized as contrivances whereby a small corporation, easily controlled by a single interest, may through its bond issues or lease agreements own other corporations two or three times greater than itself. But in each case, the purpose is avowed of establishing permanent control by existing interests. It is a pertinent question whether this purpose will not eventually invite the attacks of legislatures and courts, as effectively as the general purpose of monopoly.

Professor Meade addresses his inquiry more especially to industrial combinations, and, as he points out, the case of the United States *v.* E. C. Knight Company (sugar trust suit), decided in 1895, largely removed such companies from the scope of the Sherman act. The experiment with the modern industrial trust, immensely capitalized, is very thoroughly examined, and readers of the book will find much information and suggestion on the subject. The questions of watered stock, promoters' methods and profits, capitalization of earnings, and dividend policy, are discussed with as much completeness as was possible at the date of writing. Events since the publication of Professor Meade's book, however, have thrown very much new light upon the subject, and would probably have modified or amplified many of his opinions. This is particularly true of the questions of capitalization and dividends. The steel corporation, which capitalized the earnings of 1901 and paid out dividends on the apparent presumption that such

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earnings would be permanent, now stands as a warning to all other similar corporations, valuation of its share capital having been cut down fifty per cent, dividends on its $550,000,000 common stock indefinitely suspended, and dividends on the preferred stock paid indeed but not earned. Professor Meade, though he could not at the time benefit by a knowledge of such events, has very fairly outlined the principles which subsequent incidents have shown to be altogether sound. He predicted closely what has since occurred with the United States Steel Company. His remark is that "if the maximum earnings of an integrated company are fully capitalized, especially if the capitalization contains a large proportion of interest-bearing obligations, its financial standing is likely to be impaired by the first decline of prices." This is unquestionable truth, and has been finally established as such by the steel corporation's unlucky experience.

Much might have been added, in the light of these subsequent events, to what Professor Meade writes of working capital. This is the rock on which dozens of industrial combinations, not excepting the United States Steel, split last year. The principle may now be regarded as fully vindicated that an industrial trust cannot safely rely upon borrowing for such purposes. It must, so to speak, bank for itself, have sufficient funds of its own in hand to purchase materials and pay wages, and must provide this, first on organization, then by reserving cash from a yearly surplus. One question which can hardly yet be described as settled is whether the dangers of open competition, to escape which the trusts were formed, have really been avoided. In the steel and iron trade, the steel trust's activities have resulted in an unheard-of increase of independent producing power, with a close approach already, on more than one occasion, to the open price-cutting of the old-time "trade wars."

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Die Florentiner Wollentuchindustrie vom vierzehnten bis zum sechszehnten Jahrhundert. Ein Beitrag zur Geschichte des modernen Kapitalismus. *Studien aus der Florentiner Wirtschaftsgeschichte,* Band I. By ALFRED DOREN. Stuttgart, 1901. J. G. Cotta'sche Buchhandlung Nachfolger. — xxii, 584 pp.

Doren's study of the Florentine woollen-cloth industry demands and has obtained recognition as an important contribution not only to Italian industrial history but to the wider subject of capitalistic development

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in mediæval Europe. By skilful use of the abundant materials in the Florentine archives he has thrown new light on the inner working of the *Arte dell' lana*, the clothiers' gild which controlled the greatest Florentine industry during the fourteenth and fifteenth centuries. Doren's choice of theme is in line with his previous work, but though some of his earlier faults remain, his *Wollentuchindustrie* marks a decided advance in scholarly achievement. The rather flimsy *Kaufmanngilden* of 1893 and the meagre *Florentiner Zünfte* of 1897 scarcely gave promise of the merits which must be conceded to this first instalment of his studies in Florentine economic history.

The most valuable part of the book is unquestionably the analysis of the internal organization of the woollen industry and the demonstration of the ascendancy of its capitalistic elements. The earlier chapters, dealing with the beginnings of the industry, the technique of manufacture, including the quality and provenance of the raw materials, and the final chapter with its somewhat premature summing up of results, though they contain numerous instructive items, are of less importance and may be briefly passed over. Doren's discussion of the obscure question as to the origin of capitalistic control is inadequate. For this, doubtless, the comparative silence of the earlier sources is largely responsible, but nevertheless the problem should have been attacked, not evaded. Doren contents himself with an inconclusive examination of the rôle played by the order of the *Humiliati* in the introduction of the industry and with a brief account of the supersession of the older *Calimala* or cloth-finishing trade by the complete process of manufacture. He incidentally suggests (p. 216) that the entrepreneur *lanaioli* had sprung from the weavers, but there is no evidence that they had ever sat at the loom. It seems probable that the chief initiative in the capitalist control both of the *Calimala* and the *Lana* was taken by the cloth-merchant; but, if any of the craftsmen contributed to the formation of the entrepreneur class, the indications would point not to the weavers but to the wool-combers who, throughout the later and better known period, remained more closely associated with the clothiers than any other of the artisans.

Doren's treatment of the wool trade is likewise unsatisfactory; it is at second hand and negligent at that. He falls into the usual mistake (since corrected by Schulte in the *Zeitschrift für die gesammte Staatswissenschaft*, lviii, 39–47) of deriving the *garbo* wool from the sultanate Algarve in southern Portugal, thus antedating by almost two centuries the development of the merino wool production. He underrates the Flemish fine cloth production; his description of the English wool trade

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is superficial. He pleads that protracted researches in the archives of other countries, especially of England and Flanders, could not reasonably be expected of him, but he could at least have consulted the printed and available sources, the English Patent Rolls, for instance, or the excerpts made by Riess.

While insistence upon high quality in the raw materials, upon high technique in the preparation of the wool and in the cloth-finishing processes, together with the mastery of the commercial conditions of the time, contributed to the superiority of the Florentine product in the markets of Europe and the Orient, it is to other factors of the Florentine success that Doren has devoted his attention: to the exceptional organization of production with an advanced division and exploitation of labor, and to the operation of a town policy which both in its economic and political measures was subservient to the interests of its chief export industry. Deserving of remark in connection with this latter feature is his description of Florence's long continued effort to secure an outlet to the sea (including the hitherto unnoticed canal project of 1458), of the interesting treatment of usury in practice and in legislation, and of the war with Volterra for the coveted but worthless alum mines of Castelnuovo. The centre of interest, however, is the inner structure of the industry, the methods by which the capitalist clothier exercised control over the twenty to thirty successive stages of production. It is a curious, rambling edifice which Doren graphically depicts, where older and newer forms, elements of the handicraft system under gild organization and of the domestic system under entrepreneur direction are combined in a system *sui generis*, defying easy classification in any of the accepted industrial categories. The mediæval repugnance to the middleman finds perverted expression in the elimination of independent traders, such as the *lanivendoli* or wool-sellers and the *stamanioli* or yarn-dealers, who stood between the clothier and his supply of raw materials, while the capitalists absorbed in the export trade found it convenient to encourage the growth of a class of retail cloth-sellers between the manufacturer and the consumer. Mediæval forms remain, but are often filled with something resembling a modern content. There is a gild, but it acts solely in the interest of the entrepreneur clothiers who have captured its control; the mass of handicraftsmen are excluded or strictly subordinated. Even the well-to-do dyers, who from their special skill and capital held a comparatively favored position, retaining their political rights in the gild of the *Lana*, found these rights practically nugatory in face of a majority composed of their employers. The gild, for example, imported dye-stuffs on a large scale

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and then sold them cheaper to the clothiers than to the dyers; in case of need, and partly to keep the dyers in due subordination, the gild intervened with dye-houses of its own, while the employers' interest was further protected by minute regulations as to workmanship and by a series of elaborate wage-scales for the dyers. Other of the finishing crafts, such as the shearmen, had lost their gild privileges; and although, almost alone among the artisans in the industry, they preserved to a certain extent the direct relation with the consuming public usually characteristic of the handicraft system, this relation as well as that with the clothiers was jealously regulated by the gild. The dominance of the entrepreneur was still more marked in other branches of the industry. For the weavers, wage-scales were the less necessary since they were prohibited from working for any but the clothiers of the gild, while the employer's ownership of the means of production by the growing practice of loom-leasing ensured the dependence of the workmen. And for a considerable period the large supply of labor, due in part to the immigration of Flemish and German weavers, assisted in keeping wages at a desirably low level without resorting to the expedient of gild wage-tariffs. Spinning was done by cheap peasant labor outside Florence under the direction of the clothier's factors, and the ecclesiastical authorities were complaisant enough to enforce with spiritual penalties the dictates of the gild. Finally the clothier's own *bottega* was not only an office and a warehouse where raw material and finished product were stored, but at the same time a central workshop, to which the cloth returned repeatedly in the course of manufacture for inspection and forwarding by a staff of inspectors, factors, repairers and packers. It was also a kind of factory, for here the preparatory work, the sorting, beating, combing and carding of the wool, was done by workmen to whom the old terms of journeymen and apprentices could no longer properly apply. They were laborers, as a rule at day wages, under strict workshop discipline, — a proletariat unorganized, for the right of combination was rigorously denied to all workmen in the industry, turbulent and socially despised. In the sudden fluctuations of trade they were often thrown out of work, while the custom which became prevalent among the employers of making money advances to be repaid only in labor kept the laborer from obtaining any improvement in wages during periods of prosperity.

The entrepreneur's commercial knowledge, his capital, which gave him the sole ownership of the material and in part of the tools of production, together with his gild organization had brought under centralized control the heterogeneous elements of this cumbersome industrial

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system. What chiefly differentiates him from the entrepreneur of the domestic system was the coöperation enforced by the authority of the gild. As between employer and workman the gild, which in trade matters had jurisdiction over both, recognized only the interest of its members. It was not until the decline of the industry and of the power of the gild that the monarchical government of the sixteenth century interposed its authority to abate the exploitation of labor. But as between members of the gild there still existed traces of the mediæval principle of equality of opportunity. A case in point was the action of the gild during the temporary unsettlement of labor conditions following the Black Death. The smaller employers were the chief sufferers from the scarcity of hands and the rise in wages, but the gild came to their rescue not only by new wage-scales but by a limitation of the number of workmen that any one master could employ. The gild furthermore engaged in numerous mercantile and industrial enterprises whereby the inadequate private capital and initiative of the bulk of its members was supplemented and any undue preëminence of the larger capitalists within or outside the gild was curbed. These gild undertakings and the at times heavy state taxation demanded money, and it was in the course of the fiscal efforts of the gild that it hit upon the device of setting for its members a maximum of production, a measure not without bearing in the present connection.

Doren bases all this on gild documents, which he uses with dexterity and vivacity. But this vivacity has its dangers. It leads to loose statement; it tends easily to subordinate fact to effect. A conscientious reader, plodding through Doren's foot-notes (in which, by the way, misprints are more frequent than they should be), is too often disturbed by finding confident assertions of the text unsupported or inadequately supported by the evidence. Did space permit, numerous instances could be adduced of what is, to say the least, a regrettable omission. The *stamanioli,* we are told, were reduced from independent masters importing and manufacturing yarn to a class of wage-earning factors dependent on the clothiers. The leasing of looms to weavers, the advancing of money to the wool-combers is described as though it were the prevalent and constant practice of the clothiers. The dyers' wage-scales were, Doren asserts, maximum rates, differing from the silk-dyers' tariff, which — and here Doren misrepresents Pöhlmann's view — more charitably gave minimum rates. On these and other points, in default of satisfactory proof, Doren's statements must be taken largely on trust. He is bent on showing the existence of a highly developed capitalistic organization pitilessly dominating a great

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mediæval industry, and he is so carried away by his advocacy of this thesis that he fails to warn us of the inevitable limitations and lacunæ in our knowledge of so noteworthy a phenomenon. We hear much vague talk, where definite information would be in place, of a "tremendous accumulation of capital" (p. 400), of a "full-grown, brutal capitalism," mastering with an "unrestrained class egoism" the "proletariat masses" (p. 481 *et passim*). He accepts uncritically the unreliable figures given by Villani for the population (including the mortality in the Black Death) and for the cloth production of Florence, together with those of the Florentine cloth export through Venice attributed to the doge Mocenigo, while he dismisses rather too airily a rare statistical statement based on the tax-list of the clothiers.[1]

Doren makes some score of references to the contents of his next instalment of the *Studien*, promising among other things certain tax-list statistics. It is to be hoped that the forthcoming volume will carry less sail in the way of rhetoric and be better ballasted with facts and figures.

But in thus pleading for a better documented and more sober treatment of the subject no disparagement is intended of the abiding elements of value in Doren's work. Doren, to be sure, is not the first to discover the early existence of a capitalistic industry, nor indeed does he claim to be. Attention has recently been called to somewhat similar phenomena in Flanders by Pirenne, in Germany by Schmoller, Gothein and others, in the silk industry of Genoa by Sieveking and in that of Venice by Broglio d'Ajano; but no one has pursued this particular problem so closely on so favorable a field as has Doren. We had become accustomed in economic history to push back the beginnings of the modern period and to find here, as in the history of literature and art, earlier manifestations of modern individualism than are consonant with current notions regarding the middle ages. But Doren urges, as indeed Schmoller suggested long before him, that we must differentiate between an initial rise of capitalism in the town economy of the mediæval period, ultimately breaking down partly by reason of the limitations of that economy and of its concomitant labor organization, and a modern capitalism more happily or at any rate more securely adjusted in the wider national economy. How valid this suggestive generalization may be, how far its perspective may lead, cannot, however, be discussed within the limits of a book review.

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[1] *Cf.* appendix vii, a, and p. 343; the output for the year 1381–82 stated at 19,474 pieces of cloth from 279 makers as contrasted with Villani's estimate of 70,000 to 80,000 pieces from 300 makers in 1338.

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L'Utilité sociale de la propriété individuelle. By ADOLPHE LANDRY. Paris, Société nouvelle de libraire et d'édition, 1901. — xii, 511 pp.

This book is intended as an argument for socialism. It does not, however, pretend to completeness, but is concerned primarily with an analysis of the conflicts between private and public interests, which the author conceives to be inherent in the very nature of individual property. No attempt is made to present a like analysis of the difficulties inherent in socialism, or to strike a balance between the relative merits of socialism and of individual property as working systems.

The book is divided into two parts, one dealing with production and the other with distribution. In the first part are discussed the curtailment of production with a view to securing larger money returns through increased prices; the conflict between gross and net product; the tendency to overproduction, or rather the uneconomical distribution of the factors of production among different industries; waste; and the tendency to sacrifice the future to the present. This part of the book concludes with a discussion of the problem of maximum productivity. The second part is divided into two sections, one treating of inequality of incomes in relation to general well-being; the other, of the best system of wealth distribution.

The chief value of the work lies in the detail, sometimes, it must be confessed, wearisome and far-fetched, with which the character and extent of the various forms of conflict between public and private interests are analyzed. Nowhere else, in the knowledge of the reviewer, will an equally detailed and systematic discussion be found. It must be said, however, that, except in the first division of the first part, devoted to the curtailment of production in the interest of higher prices and constituting the most valuable portion of the book, there is a crudeness in the conception of the facts of economic life, and a tendency to the exaggeration of partial truths, which go far to impair the value of the work. These faults can be traced in part at least to an evident lack of economic training, shown most clearly in the failure to understand so familiar a principle as Ricardo's theory of international trade (pp. 416, 417). Thus, in the section devoted to the consideration of gross and net product, the author seems to hold that the value of land and capital is determined by their productivity; hence, if it is necessary on account of the high value of these factors to economize their use in a certain industry, that fact itself is proof that their value in some other industry is greater than in the industry in question; and the economy is bene-

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ficial from the point of view of the public. The wage of the laborer, on the other hand, is determined, not by his productivity, but by his needs. If he cannot be profitably employed in a certain industry, the probable reason is, in a well-developed country at least, not that he has a higher value in some other industry, but simply that he cannot produce the equivalent of his wage. Not to employ a laborer who cannot produce his wage is, however, an injury to the community, which loses whatever productive power the laborer may possess. Approaching the same question from another standpoint, it is argued that instruments of production, other than labor, involve cost. If their cost exceeds their product, their use is evidently injurious to the community. Laborers, however, have no cost, and whatever they produce is clear gain. Economy in labor, therefore, which involves a diminution in the number of laborers, results in loss to the community. It can be readily understood how from such premises, more appropriate to a work on the administration of charity than to a work on economics, it is possible to reach, for example, the conclusion that England would be more populous and enjoy a larger revenue if it produced its own food supply (pp. 109, 127).

While the securing of the maximum production is the great economic problem, the failure to solve which condemns, in our author's view, the existing system, the present economic organization is open to criticism also on the ground that, since wealth is unevenly distributed, the productive power actually employed is not so distributed as to yield the maximum amount of satisfaction of which it is capable.

In his brief treatment of socialism as a constructive system, M. Landry accepts the principle of equal distribution of wealth, subject to such slight modifications as may be necessary to secure efficiency in production. He recognizes that demand and supply, and not the principle of labor cost, must control prices, and that it may be necessary for the state to regulate the growth of population, which he thinks can be easily done by making the family responsible for the care of children when it is desired to discourage the growth of population, and by placing the responsibility on the state when it is desired to encourage it. It would simply be a question of choosing the number that, all things considered, might seem desirable (p. 128).

While the book has a real value, and is often suggestive even when it is not convincing, it is far from being an adequate discussion of the subject which it treats.

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Pure Sociology. A Treatise on the Origin and Spontaneous Development of Society. By LESTER F. WARD. New York, The Macmillan Company, 1903. — viii, 607 pp.

Except perhaps to readers already familiar with the author's previous works, it would be impossible to convey in a few paragraphs even an approximate idea of the contents of this volume. We might compare it to an algebraic formula of two complex terms. These are "genesis" and "telesis." The argument is an analysis of these two terms into their principal components. This, however, would be Greek to one who had not read the book. Another way of suggesting its contents would be to say that the principal words of the alternative title may be rearranged so as to stand for the subject-matter and the chief points of view from which the subject-matter is considered: "society," "origin," "development," "spontaneous." The phenomena of society in general present the problems. Among them, problems of the origins of society are primary; the idea and the fact of a progressive unfolding are next in order; and that portion of the process which the author proposes to treat in this book is the spontaneous phase. Those human actions in which men say to themselves, "Go to now, we will modify society," are reserved for a future volume. Attention is directed in this book to those social developments that take place while men's thoughts are not fixed upon society as such at all, but while they are obeying impulses that are relatively individual. The inquiry might be paraphrased in the question: "What are the lines and the laws of convergence through which acts not so intended by the actors produce or modify social combinations?"

Since space does not permit a *résumé* of the contents of the book, it is best worth while to indicate its importance. The author recurs now and then to a familiar phenomenon which he expresses as "the illusion of the near." The attitude of the majority of Professor Ward's contemporaries toward his book has furnished a clear instance of that vagary. The book before us confirms an opinion which has been growing upon the present reviewer since the *Dynamic Sociology* appeared twenty years ago. "The illusion of the near" chiefly accounts for any failure by his contemporaries to recognize Professor Ward as entitled to rank with the world's first-rate philosophers. Indeed, the query may be raised whether he is not to be classed as a philosopher rather than as a sociologist, for, although he is by general consent the Nestor of American sociologists, he appears in *Pure Sociology* as an explorer in positive philosophy, with society as his base. But his interest as

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here revealed is in a range of generalization that correlates all the phenomena and problems of biology, psychology and sociology. The work therefore is comparable not with Spencer's *Principles of Sociology;* it is rather in the same genus with that writer's *First Principles.* Considering the mass of knowledge and the complexity of relationships with which Professor Ward is familiar at first hand, in contrast with the nearly empty formal categories which are the stock in trade of most philosophers, and considering the scope of his thought with reference to this material, the *Pure Sociology* strengthens the conviction that when he is far enough away for the "illusion of the near" to vanish, he will come into focus in the history of thought as a not less conspicuous figure than Comte, and not at all hidden by the shadow of Spencer.

The essential interest of the sociologists is in getting as many social categories as possible, and as soon as possible, in shape for use in criticising our own passing phase of the social process. In the book before us this interest appears to be incidental rather than central in the author's thinking. This, however, is immaterial. So too is the question whether this volume speaks a final word upon any of the philosophical problems with which it deals. Some of the most useful thinkers have opened more questions than they have closed. Whether or not the mental type that tries to think things through is approaching extinction, the *Pure Sociology* reveals Professor Ward as a stalwart survivor of the species, and no one that wants to get an all-round look at things from the social point of view can afford to neglect this his latest book.

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Les Finances de la Russie au XIXe Siècle. By JEAN DE BLOCH. Paris, Guillaumin, 1899. — 2 vols., 265, 267 pp.

Russlands Finanzpolitik und die Aufgaben der Zukunft. By K. GOLOVIN, from the Russian of KOLOSSOVSKI. Leipzig, Otto Wigand, 1900. — 233 pp.

A history of Russian finance requires frank and independent treatment, for the official reports and statements tell only a part of the story. A borrower naturally wishes to give the best possible aspect of his resources and prospects, for on them his credit depends. Russia has long been borrowing in foreign markets, and the budget statements have more than once dwelt upon the possible revenues and the plans of retrenchment, rather than on the actual condition of treasury and people. It is the foreign purchaser of Russian stock who is addressed, rather

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than the people of Russia or the student of public finance. It is difficult to place implicit confidence upon the figures submitted in the budget reports; and this confidence is further shaken by a comparison of results with promises, after the budget has been closed. The true balancing of income and expenditure is not only never attained, but the differences are so large as to be difficult of explanation on any reasonable grounds.

The volumes of Bloch are what might be expected of this distinguished exponent of peace principles. He arrays his facts in almost a strict chronological order, taking the figures of each year's accounts and giving with them the more important intentions of the minister of finance, the projects of reform or change, and the administrative regulations introduced. The reader will find in these annals a fair presentation of the facts and an orderly arrangement, which, however, would have been far more useful with an index. Unfortunately the work closes with 1882, and many of the most important changes in financial policy have been introduced since that time. It suffers too from the absence of definite criticism of the many schemes which the necessities of the state have called forth. That the whole financial system was "vicious" until about 1870 is admitted, and it is interesting to note how far the author admits that many of the vices are still existent. So much depends upon this spirit of interpretation that it is only by reading between the lines that the real attitude of M. Bloch can be determined. His story is a very simple one on its face. It is that of a long series of deficits, covered by emissions of paper money and foreign loans. The remarkable growth of ordinary and extraordinary expenses, with a slower development of ordinary revenues, marks the weak point in the system, and explains why resort is had to so many expedients for raising money. Taxation tends to become ineffective, and the arrears of unpaid taxes and dues have increased. New taxes are in part neutralized by the real poverty of the country, the heavy cost of collection, war, and the desire of government to encourage domestic industries. The value of the paper money has been another difficulty, and the political relations with other powers have imposed upon Russia undertakings that weigh upon her finances without making as yet any returns. M. Bloch gives a long list of expedients for obtaining an adequate revenue, but they all seem to have fallen short, driving the government to its usual resource — the foreign money market. The fact is noted that the offer of the bonds of the United States in Europe during the Civil War exercised a detrimental influence on Russian securities, but the subsequent wanderings of the im-

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perial stocks from London to Berlin and from Berlin to Paris, in response to political exigencies, belong to a later period than is covered by these volumes of M. Bloch.

Russlands Finanzpolitik is more concerned with the sources of Russia's wealth, and especially with the agricultural condition of the empire. There will be found a close study of the ownership and cultivation of the land, and if the conclusions are sombre, the author appears justified by the facts. A part of these conditions has grown out of measures of internal policy, like the disposition made of the land at the emancipation of the serfs. Another part is due to such world-movements as the fall in the price of grain. That Russia is threatened with an agricultural proletariat is demonstrated, although the situation is not hopeless. The programme of reforms is a long one, calling for much intervention on the part of the state. It involves practically every phase of agricultural activity, from the education of the peasant in methods of cultivation to the regulation of the export of the product. It is impossible even to summarize the recommendations of our author, for they involve a recasting of the social life of rural Russia, and approach the revolutionary in their application.

WORTHINGTON CHAUNCEY FORD.

WASHINGTON, D.C.

The Unreformed House of Commons. By EDWARD PORRITT, assisted by ANNIE G. PORRITT. Cambridge, at the University Press, 1903. — Two volumes, 623, 584 pp.

By the "unreformed House of Commons" Mr. Porritt means the representative branch of Parliament as it was before the Reform Act of 1832. But the term, as it is used in the title of this work, is also made to cover a discussion of the Scotch parliament and of the Irish house of commons as they were before the Acts of Union, and of the representation of Scotland and Ireland in the unreformed imperial Parliament. The authors discuss borough and county representation in all the three kingdoms, from their origin in the later middle age to their union and consolidation in the electoral system of Great Britain as it was in the early nineteenth century. In Scotland also the lords, as well as the commons, are brought within the limits of their subject, because both orders sat together in the same house. In the treatment of the English and Irish parliaments, however, only such reference is made to the Lords as is required to explain the relations which existed between the commons and the respective upper houses.

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But the authors have done much more than to describe the electoral systems in the three kingdoms and to trace their historical development. They treat at length of the relations between members and their constituents, whether the latter were communities or patrons. The usages and procedure of the houses are also the object of prolonged attention; in the case of the English house no less than eleven chapters are devoted to this subject. Among them appears an original and valuable discussion of the evolution of the speakership from its early condition of dependence on the crown to its modern attitude of non-partisanship. The personnel of the House of Commons, its relations with the press, the privileges of its members, and even its officials, the places of its meeting and the method of creating the members, receive detailed attention. Briefer accounts are given of the same features in the development of the other houses. In the case of the Irish parliament interesting chapters are also devoted to the workings of the Poynings law and to the history of the Act of Union of 1800. The material which is brought together in these chapters covers much the same ground in the early modern period as that relating to the middle age which is given by Stubbs in his chapter on the antiquities of Parliament. The information thus brought together not only shows how the houses were elected, but how and under what conditions their business was done.

The plan of the present work excludes, so far as possible, all reference to efforts in favor of parliamentary reform. The history of that movement is reserved by the authors for possible treatment in the future. Their efforts in the volumes now published have been confined to an exposition of what the old Parliament was and of the electoral system which was connected with it. For this purpose extensive use has been made of the journals and statutes of the three parliaments concerned, of parliamentary histories and other reports of debates, of correspondence, memoirs and a great variety of historical and biographical material. Unprinted sources have been used only to a limited extent.

The work is based on wide though not exhaustive research and is of great value. It is a decidedly original contribution to the study of the English constitution. It deals with a group of facts to which little systematic attention has hitherto been paid. Its subject lies in the immediate rather than the remote past, and therefore it helps directly to explain the growth of institutions as they now are. It helps to bridge the as yet unspanned gulf which lies between the mediæval constitution and the political system of the present time.

The book, however, is not a literary success. It has neither introduction nor conclusion. It contains very little generalization. No

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attempt is made to give a picture of the political society of which the old electoral and parliamentary system was the consummate flower. The subject was apparently not grasped as a whole, or in its setting, but in parts. The book does not indicate that the authors had dwelt intellectually in the old aristocratic society of Great Britain long enough to become thoroughly conversant with it. It indicates diligent note-taking rather than wide reading and prolonged meditation. The book is therefore hard to read. It is a work to be consulted rather than read through. Though of great value as a contribution to knowledge, it is not itself in all respects a finished product.

HERBERT L. OSGOOD.

Self-Government in Canada and how it was achieved: The Story of Lord Durham's Report. By F. BRADSHAW. London, P. S. King and Son, 1903. — 414 pp.

It does not seem likely at present that Mr. Chamberlain will succeed in convincing the British people that preferential tariffs are necessary to the preservation of the empire, but at least he has the satisfaction of knowing that his agitation has aroused the keenest public interest in colonial questions. Of the many books dealing with those questions which have appeared in the last half decade, few, if any, teach such valuable lessons as are to be found in the volume under review. Great Britain has never faced a more difficult colonial problem than that which confronted her in Canada at the close of the Seven Years' War, and the story of her struggles to find a satisfactory solution is one of the most instructive chapters in the history of the empire. The central feature of the book is an exhaustive analysis of Lord Durham's report. But to appreciate this document one must have a picture of the social, economic, religious and political conditions of the country at the time when it was written. One hundred and twelve pages are accordingly devoted to a sketch of the history of Canada from the English conquest in 1760 to Durham's arrival in 1838. The "rule of the soldiery," the constitutions of 1774 and 1791, the Papineau and Mackenzie agitations and the rebellion of 1837 are discussed briefly but thoroughly. The reader is thus saved the necessity of plodding through the ponderous tomes of Kingsford to get in touch with the historical situation.

The disturbances of 1837 were restricted to Upper Canada, where there was a large American element, and to Lower Canada, where the French predominated. There was also considerable dissatisfaction in

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the Maritime Provinces, but the intensely British character of the population prevented an open revolt. In Upper Canada the ruling class was composed of the earliest English settlers and of American loyalists who had left the United States at the close of the Revolution. An oligarchy at Toronto, the so-called "family compact," practically controlled the government. Opposed to it were the Dissenters, whose ranks were recruited largely from the later American, Irish and Scotch settlers. Political and religious questions were involved, but, as Mr Bradshaw shows, the most serious grievances were economic in character. The "family compact" and the Established Church had received huge grants of the best land in the province, which they were unable to improve and settle. The people also suffered from the lack of transportation facilities. The Welland canal had been constructed at great expense, and work had been begun on the Cornwall canal, but for lack of capital it was not completed. The government was accordingly compelled to meet enormous interest charges and to keep in repair a public work, which, under the circumstances, was comparatively useless. The situation was made worse by the persistent refusal of Lower Canada to take any steps toward deepening the St. Lawrence. In Lower Canada the French Roman Catholic majority was arrayed against the English Protestant minority, an ignorant and inefficient peasantry against merchants of wealth and intelligence. The French had numbers, the English had wealth; the French voted the taxes, the English had to pay them. As Durham expressed it, there were "two nations warring in the bosom of a single state." That there should have been continual strife between these factions in the two provinces was inevitable. But when the final appeal to arms was made, only the most extreme radicals responded. The Methodist influence was thrown against Mackenzie in Upper Canada, and the influence of the *curés* against Papineau in Lower Canada.

Lord Durham arrived at Quebec, May 28, 1838. The act which provided for his appointment and the instructions which he received from the government were apparently intended to confer upon him the powers of a dictator. At any rate, he acted upon that hypothesis. One of his measures was to issue an ordinance by which the leaders in the recent rebellion, without being permitted even the form of a trial, were condemned to exile in the Bermudas and were threatened with death in case they returned. Parliament disapproved of the ordinance, and he resigned.

Although he was in Canada only five months, Durham was able, with the aid of a valuable corps of assistants, to make a careful study

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of the situation. The results were published in the report, which has been characterized as "one of the ablest state documents ever penned." Bradshaw gives us a detailed study of each of its five sections: Lower Canada, Upper Canada, the Maritime Provinces, public lands and emigration, and recommendations. The various problems, racial, religious, political, social and economic, are explained and discussed with thoroughness and freedom from prejudice. Durham's recommendations have been of great value to the British government. He advocated the union between Upper and Lower Canada, which was brought about in 1841. That measure, to be sure, proved unwise, but the remedy adopted for the evil in 1867 was that of a legislative union of all the provinces, which had also been suggested in the report. Finally, the extension of the system of parliamentary government to the colonies, the foundation of Britain's new colonial policy, was strongly recommended by Durham, although he did not originate the idea.

The problem of authorship is one of the most interesting questions that have come up in connection with the report. The truth of the epigram that "Wakefield thought it, Buller wrote it, Durham signed it" was called into question many years ago. John Stuart Mill regarded Buller as practically the sole author; an article in the British *Quarterly Review* for November, 1849, attributed it to Wakefield; Egerton is equally convinced that the credit belongs to Lord Durham himself; Dr. Garnett divides the honors almost evenly between Buller and Durham and assigns to Wakefield a subordinate share (see the English *Historical Review*, April and July, 1902). Bradshaw's account confirms Dr. Garnett's theory of triple authorship, but he is inclined to be more favorable to Wakefield and Durham and a little less so to Buller.

W. Roy Smith.

Bryn Mawr College.

South Carolina as a Royal Province, 1719–1776. By W. Roy Smith. New York, The Macmillan Company, 1903. — 441 pp.

This work is essentially a development of the following thesis:

> Without assuming, as Chalmers does, that the colonists were all along consciously striving for independence, I think we may safely affirm that the real history of the revolt dates from the founding of the first English settlements in Virginia. . . . The object of this monograph is to trace the progress of the struggle in South Carolina, with the hope that it may throw some light upon the history of the American Revolution [preface, p. v].

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By the struggle in South Carolina Dr. Smith means the series of party contentions between the governor and council on one side, defending the king's prerogative or the interests of the proprietors, and the lower house, defending popular rights on the other side. In his view this struggle was similar in all the colonies and was a reproduction, on a small scale, of the constitutional history of the mother country. In other words, it was a part of the great movement towards democracy, a reaction against the régime of centralized monarchy.

The author has divided his work into three sections. The introductory section treats of the evidence of contention and strife between the settlers and the proprietors. The next section sets forth the disputes concerning the land grants, the land frauds and the quarrel over the quit rents. The last section contains a good account of the organization and workings of the colonial government, with chapters on the executive, the legislature, the judiciary, the colonial agents, militia and defense, the financial history, and lastly, on the attempts, under George III, to restore the power of the governor and council over the lower house and the people — acts which drove the colonists into open revolt.

The work shows that the author has made a painstaking search in all the available sources for the facts bearing upon the subject. He has set these forth in chronological order and under appropriate headings so as to bring out and illustrate his thesis. The book is free from mere argumentation. The facts, so far as they have been obtainable, are permitted to tell the story. The author's style is clear and straightforward throughout. Perhaps the best chapter is the rather long one on financial history. This chapter throws a good deal of light on the controversies over paper money and the contention of the lower house that it had a right to a controlling power in the levying of taxes and, to a certain extent even, in the appropriation of the public funds. It appears that the people had won a substantial victory long before the reign of George III. Through their control of the finances they forced the governor and council and the courts to yield again and again to the popular demands. Finally the lower house absorbed a good share of the law-making power and even encroached on the functions of the executive through the appointment of innumerable commissions to carry particular statutes into effect. It was the attempt of the royal officials under George III to abolish these irregular practices, and restore the government in practice to what it was on paper, that irritated the colonists into armed resistance.

The author does not attempt to show any causal connection between

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the early quarrels of the people with the representatives of the home government and the Revolution. His aim is merely to give a faithful account of these controversies so as to enable us to see what state of things really preceded the final revolt. If studies of this sort do nothing more, they at least correct the old view that the American Revolution turned about the patriots of Boston, Philadelphia and Richmond, and show that it was deeply rooted in the local constitutional history of every colony.

WM. A. SCHAPER.

UNIVERSITY OF MINNESOTA.

Citizenship of the United States. By FREDERICK VAN DYNE, assistant solicitor of the Department of State of the United States. Rochester, N.Y., The Lawyers' Coöperative Publishing Company, 1904. — xxvii, 385 pp.

Das amerikanische Bürgerrecht. Von BURT ESTES HOWARD. Staats und völkerrechtliche Abhandlungen, herausgegeben von Georg Jellinek und Georg Meyer, Band IV, Heft 3. Leipzig, Duncker und Humblot, 1904. — x, 155 pp.

If Mr. Van Dyne had something of Mr. Howard's constructive bent and courage in generalizing, or if Mr. Howard had Mr. Van Dyne's extensive and accurate knowledge of judicial and administrative precedents, either of them might have produced a very satisfactory treatise on the acquisition and loss of United States citizenship. Mr. Van Dyne has given us a most useful collection of material. He has brought together, under each topic discussed, the laws, elucidated in some cases by the Congressional debates; the decisions of federal and state courts and of certain international arbitration commissions; the opinions of attorneys-general and the decisions of the Department of State. Apart from the fact that he has devoted sixty pages, one-fifth of his entire text, to excerpts from the majority opinions in the case of Downes *v.* Bidwell — opinions which deal with citizenship only *obiter* and which are so easily accessible that it seems needless to reprint so much of them — there is little to criticize either in his inclusions or his exclusions. He does not, however, always state clearly or arrange logically the rules which are embodied in this mass of material.

In presenting the common-law rule, reënacted in the fourteenth amendment to the Constitution, that birth in the territory of the United States establishes citizenship, Mr. Van Dyne does not indicate in any one place just what exceptions are contained in the clause "subject to

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the jurisdiction" of the United States. In describing the legislation which has regulated the status of the foreign-born children of American citizens, he concludes with the assertion, for which no authority is cited, that the persons who thereby acquire American citizenship are natural born citizens of the United States. This proposition has been the subject of too much controversy and the opposing arguments are too strong to justify so unqualified a statement. Until the question is decided by the Supreme Court, it will be an open one. In dealing with cases of dual citizenship resulting from conflicts of *jus soli* and *jus sanguinis*, Mr. Van Dyne declares that "such conflicts are not resolved by a resort to the principles of international law" (page 25). By this he probably means only that international law does not determine nationality. If, however, he intends to question the assertion repeatedly advanced by our State Department — that international law accords to the *sujet mixte*, when he attains majority, a right to elect a single nationality — his position is well taken. The principle of election is, as Mr. Van Dyne remarks, "recognized by a large number of states," but it is not yet a principle of international law. The only rule of international law in this matter is that each state to which the *sujet mixte* owes allegiance is entitled to enforce its own laws within its own jurisdiction. The theory of election was never brought into this class of cases, either in European or in American diplomacy, until in the administration of President Buchanan our State Department began to claim a right to protect naturalized American citizens against the governments to which their original allegiance was due. Having taken this position, it began to apply the doctrine of election to cases where a dual allegiance existed at birth. Secretary Hay has returned to the older and sounder view, not merely in the case of those who have dual nationality by birth but also in the case of naturalized citizens who are still claimed as subjects by their original sovereigns. He wrote in 1900:

> In international law the status of such persons comes under the doctrine of dual allegiance, each government claiming and exacting the allegiance of its naturals [nationals?] within its own jurisdiction and each being incapable of enforcing its own municipal law of citizenship within the jurisdiction of the other [page 301].

In discussing expatriation, Mr. Van Dyne points out (as several of our Presidents have pointed out, in fruitless appeals to Congress for legislation) that although in 1868 Congress declared expatriation to be a "natural and inherent right of all people," neither this act nor any

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subsequent legislation has indicated what steps the American citizen must take to divest himself of his nationality. This statement, however, is not quite true: Congress has indicated two methods in which the American may exercise his natural and inherent right of expatriation. He may enlist in, and desert from, the military or naval service of the United States, or he may go beyond the limits of the United States with the intent to avoid a draft into the naval or military service. American citizens pursuing either of these courses "are deemed to have voluntarily relinquished and forfeited" their rights of citizenship (Revised Statutes, secs. 1996, 1998). Under our expatriation treaties, the American citizen may, of course, divest himself of his citizenship by voluntary naturalization in another country. As to other modes of expatriation, the State Department, with some slight assistance from the courts, has endeavored to fill the open places in our law by decisions granting or refusing protection. These are conveniently summarized by the author on pages 273–282.

Mr. Van Dyne's book was printed too soon to enable him to include the decision of the United States Supreme Court in the case of Isabella Gonzales — a decision which determines the political status of our insular dependents. He notes without comment the decision of the circuit court that the Porto Ricans were to be regarded as aliens. Now that the Supreme Court has affirmed the contrary, it seems necessary to admit that between citizens and aliens there is in the American empire an intermediate class of American subjects or, as the newer and gentler phrase describes them, "nationals." To this class belong also, since Congress has swept away the fiction of their tribal independence, the Indians who have not yet obtained citizenship under the acts of 1887 and 1890.

Mr. Howard's treatise is largely devoted to setting forth the rights and immunities of United States citizens, but in the opening sixty pages he deals with the acquisition and loss of citizenship. His discussion of the relation of federal and state citizenship before and since 1868 (pages 4–10) is clear and accurate; but his interpretation of the present law governing the acquisition of federal citizenship by birth (pages 11–38) is as indefensible as it is novel. He asserts that, under the proper construction of the fourteenth amendment, children born in the United States of alien parents temporarily resident therein are not citizens of the United States ; that our citizenship attaches *jure soli* only to the children of domiciled parents. He asserts also that, under the proper construction of the act of 1855, children born abroad of American parents who intend to return to the United States are natural-

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born citizens of the United States, but that American citizenship is not acquired by such children when the parents are domiciled abroad. There is no warrant for these opinions in the Constitution or laws of the United States or in the decisions of the courts. The act of 1855 indeed declares that "the rights of citizenship shall not descend to children whose fathers never resided in the United States"; but this restriction does not affect the citizenship of the first generation born on foreign soil. The State Department, in its discretion, may withhold protection from the American-born father domiciled on foreign soil and from the children born to him abroad, when it is convinced that there is no intention on their part to become residents of the United States, but the State Department cannot denationalize them. As regards the fourteenth amendment, it was indeed asserted by Justice Miller in an inconsiderate dictum in the Slaughterhouse Cases, that the phrase "subject to the jurisdiction" was intended to exclude the children of aliens born in the United States, but he made no exception in favor of domiciled aliens. And while in the notable series of cases which have recognized the American citizenship of Chinese persons born in the United States, from that of Look Tin Sing (21 Fed. Rep. 905) to that of Wong Kim Ark (71 Fed. Rep. 382, 169 U.S. 649), all the persons whose American citizenship was affirmed were in fact born of parents long resident and probably domiciled in the United States, the decisions were not based on this fact; and in the case of Gee Fook Sing (7 U. S. App. 27, 49 Fed. Rep. 146), who was taken by his parents to China when three years of age, the judgment of the circuit court denying protection was indeed sustained, but this decision was put solely on the ground that birth in the United States was not proved. Mr. Howard's solution of this whole question (which is the solution adopted in the Dutch and Italian laws) has much in its favor from the point of view of legislative policy, but in the existing law of the United States it has no basis whatever.

The latter part of Mr. Howard's pamphlet, which deals with the guarantees of civil liberty in federal and state constitutions and which is largely based upon the work of Judge Cooley, will be of real value to German readers. Mr. Howard's German is clear and good, and his translations of technical English expressions are frequently very felicitous.

MUNROE SMITH.

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RECORD OF POLITICAL EVENTS.

[From November 20, 1903, to May 1, 1904.]

I. INTERNATIONAL RELATIONS.

ASIATIC AFFAIRS. — The event of overshadowing importance in world-politics was the outbreak on February 8, after six months of fruitless negotiations, of the long expected **war between Russia and Japan.** As far as can be ascertained from the official statements of both governments the **demands of Japan** were: (1) Russian recognition of Chinese sovereignty in Manchuria; (2) Russian recognition of Korea's independence and territorial integrity, of Japan's preponderant interests in Korea, and of equal commercial opportunity in that kingdom for all nations; (3) the erection of a neutral zone on both sides of the Yalu River between Manchuria and Korea; and (4) the engagement upon the part of Russia not to impede the eventual extension of the Korean railroad into the southern part of Manchuria. Russia, on the other hand, took the ground that the question of Manchuria concerned first of all China herself, and secondly all the powers having commercial interests in China, and accordingly declined to deal with it in a special treaty with Japan. She eventually offered to embody in an agreement with Japan a clause in which a pledge to respect the rights of Japan and of other powers in Manchuria under their respective treaties with China was to be coupled with a mutual declaration that Manchuria lay outside the sphere of Japanese interests; but this offer, which Japan considered intrinsically inadmissible, was made upon the condition that Japan should also agree to the establishment of a neutral zone in Korea north of the 39th parallel and should engage not to use Korean territory for strategic purposes. The slow progress of the negotiations aroused popular dissatisfaction in Japan, and in December the lower chamber of the Diet passed a vote of lack of confidence in the cabinet. (See below, ASIA.) On January 13 the Japanese government delivered to the Russian minister at Tokio a note with counter proposals and requested a prompt answer. After waiting three weeks for a reply, and being informed that Russia was making active military preparations and moving troops toward Korea, the Japanese government decided on February 6 to break off negotiations and "resume its liberty of action." Accordingly a mutual withdrawal of ministers followed, and on the next day, February 7, Japan seized Masampho as a basis of operations and began landing troops in Korea. **Hostilities** began on February 8, with a midnight attack upon the Russian squadron at Port Arthur by Japanese torpedo boats, which disabled the battle ships "Retvisan" and "Tsarevitch" and the cruiser

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"Pallada." Later in the morning the Japanese fleet bombarded Port Arthur and inflicted further damage on the Russian fleet. On the same day the Russian cruiser "Variag" and the gunboat "Korietz" were sunk off Chemulpo after an hour's battle with a Japanese squadron. On February 10, formal declarations of war were issued by both governments, accompanied in each case by a review of the negotiations and a statement of grievances. Russia threw upon Japan the responsibility for breaking off the negotiations, while Japan justified her action by Russian procrastination and military preparations. On February 23 the Russian government issued a note to the powers protesting against Japanese occupation of Korea, the government of which had in January announced its intention of maintaining the strictest neutrality in the event of war. In the same note Russia charged the Japanese with committing a flagrant breach of international law by suddenly attacking the two Russian warships in the neutral port of Chemulpo, not only before any declaration of war, but when, by the cutting of telegraphic communications, they had prevented the Russian commanders from receiving notice of the rupture of diplomatic relations. — Soon after the outbreak of hostilities, Mr. Hay, the American Secretary of State, addressed to the signatory powers of the Peking protocol (see RECORD for June, 1901, p. 388), including Japan and Russia, a note inviting their coöperation in maintaining the **neutrality of China**, in causing to be respected the "administrative entity" of that empire, and for localizing hostilities within as small an area as possible so as to prevent undue disturbance of the Chinese people and interference with the peaceful commerce and intercourse of the world. Favorable replies announcing adherence to the principle of the note were promptly given by all the neutral powers addressed. Russia and Japan both assented with certain qualifications; Russia reserving the right to prosecute the war in Manchuria and to limit therein Chinese administrative control so far as it affected certain Russian railroads, Japan reserving the right to treat Manchuria as outside the proposed neutral zone and to take any action therein necessary to offset Russian violation of Chinese neutrality. On March 29 Admiral Alexieff placed Niuchwang under martial law, and the place has since been fortified by the Russians. — An important diplomatic incident of the war was the conclusion on February 23 of a **treaty between Japan and Korea**, by which Japan undertakes to guarantee the independence and integrity of Korea and by which Korea becomes a virtual protectorate of Japan. To this end Japan is to be allowed to occupy Korea when "circumstances require," and the Korean government is to adopt the advice of Japan in regard to improvements in administration. Three days later the Korean government announced a formal alliance with Japan in the war against Russia and at once ordered Korean troops to join the Japanese army in the field. It was announced at the same time that the Korean port of Wiju, forty miles above the mouth of the

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Yalu, was to be thrown open to the commerce of the world. In the meantime Russia served notice on Japan that she should hold Japan responsible for Korea's action, and Japan warned China that her neutrality would be respected only on condition that she should scrupulously observe it herself. In April the Russian government officially announced that no offer of mediation would be accepted, and that no neutral power would be permitted to interfere, at the close of the war, in determining the conditions of peace. Early in the war the Russian government declared that it proposed to treat coal as unconditional contraband of war and in April it announced that all newspaper correspondents using wireless telegraphy to send reports from the war zone would be treated as spies. — Meantime **military operations** proceeded without decisive results. On February 23 General Kuropatkin, the Russian minister of war, was appointed to command the Czar's armies in the East and Admiral Makaroff, an aggressive leader, was put in command of the naval forces. Admiral Alexieff was left in nominal supreme command as viceroy. On April 20 it was stated that he had tendered his resignation in consequence of friction with other officers in high command and on account of criticism directed against his inactivity; but later it was announced that the Czar had refused to accept the resignation. On April 13 the hopes of the Russians in Admiral Makaroff's leadership were blasted by a catastrophe which occurred in the harbor of Port Arthur. This was the destruction by a floating mine of the Russian battleship "Petropavlovsk," which resulted in the death of the admiral and over 500 officers and seamen. Admiral Skrydloff was appointed as the successor of Admiral Makaroff in the command of the eastern fleet. At the close of this RECORD Port Arthur had been repeatedly attacked by the Japanese fleet under the command of Admiral Togo and several attempts had been made to close the harbor by sinking merchant ships at its entrance. The Russian fleets thus far have been practically bottled up in the harbors of Port Arthur and Vladivostock, and have been unable to impede the transportation of the Japanese military forces to Korea. In the latter part of April the Japanese army began crossing the Yalu River, and on May 1 it won a notable victory over the Russians at a point ten miles north of Antung. — While Russia's energies were tasked to the utmost by the contest for the control of Manchuria, Great Britain had free hand for her advance into **Thibet.** The British expedition, commanded by Colonel Younghusband, began its movement in July last, for the purpose, it was asserted, of discussing with the Thibetan authorities certain questions with regard to boundaries and trade, it being alleged that the Thibetans had failed to observe their treaty relations with India. With 500 officers and troops Colonel Younghusband occupied the Chumbi Valley, the "Key of Thibet," and sent a message to the Lama announcing his arrival. He was informed that the British mission would not be received in Thibetan territory. Thereupon Colonel Younghusband fortified his position and called upon

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his government for reënforcements, which were promptly sent. Late in March the expedition was attacked near Geru by the Thibetans, and in the ensuing battle the Thibetans suffered a loss of 400 men. The expedition continued to advance and on April 4 entered Geru. On April 14 Gyangtse surrendered to the British without resistance.

EUROPEAN AFFAIRS — For some weeks following the outbreak of the Russo-Japanese War it was believed that several other nations were in danger of becoming involved in the conflict. Active military preparations on the part of several neutral governments were reported; proposals to increase military and naval budgets were warmly discussed in several parliaments; and slight financial panics affected the bourses of the larger cities. The governments of Sweden-Norway and of Denmark entered at once upon a consideration of precautionary measures for the protection of their neutrality, the Danish government going so far as to call out the reserves and to place its navy in readiness. In France **pro-Russian sentiment** was increasingly manifest and the expressions of sympathy for Russia were so marked as to attract general European attention. An official canvass of the French parliament early in March showed a considerable majority of both chambers to be in favor of supporting the Franco-Russian alliance. It was announced, however, that the government would maintain strict neutrality under all circumstances. The attitude of Germany also was marked by evidences of friendship for Russia and an increasing cordiality toward France. In Great Britain the **anti-Russian feeling** was the stronger by reason of the British alliance with Japan (see RECORD for June, 1902). A considerable increase was made in the naval budget and the navy was refitted for active service. The king, however, announced a policy of complete neutrality. — The opposing contingent commitments of France and Great Britain with regard to the war in the East have not affected the increasing cordiality between the two nations to which reference was made in the last RECORD (p. 735). On April 8, after long negotiations, an **Anglo-French colonial settlement** was signed at London. It comprises three separate instruments, the first of which deals with Egypt and Morocco; the second settles the long-standing dispute concerning French fishery rights on the shore of Newfoundland, and in connection therewith adjusts certain differences with regard to possessions in Africa; the third relates to Siam, the New Hebrides and Madagascar. By the first instrument France withdraws all opposition to Great Britain's continued occupation of Egypt, and Great Britain, her commercial rights being guaranteed, recognizes the preponderant interests of France in Morocco. By the second instrument, France surrenders the right to dry or cure fish on the coast of Newfoundland, while she retains to a certain extent the right to take fish in common with British subjects. For this relinquishment France obtains a money indemnity as well as certain concessions in West Africa in the form of frontier readjustments and improved

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facilities of communication. By the third instrument, minor disputes concerning British and French interests in Siam, the New Hebrides and Madagascar are settled. The amicable settlement of so many long-standing disputes is regarded as a notable diplomatic triumph and is thought to remove the last barriers in the way of permanent peace between the two nations. Some dissatisfaction has been expressed in Germany at the Anglo-French *entente*, on account of the fear that German rights in Morocco may be endangered. — Other notable diplomatic achievements which are calculated to aid in the maintenance of the general peace of Europe have been the conclusion of **arbitration treaties** between Great Britain and Italy, between Great Britain and Spain, between France and Spain and between France and Italy. These treaties are substantially identical with the Anglo-French convention of October 14, 1903 (see last RECORD, p 735): it is agreed that disputes of a judicial nature, or such as relate to the interpretation of treaties which cannot be settled through the regular diplomatic channels, shall be referred to the Hague Tribunal, provided they do not affect the vital interests, independence or honor of the contracting states and do not concern the interests of third parties. A treaty of arbitration which contains no limitations in regard to questions that may be decided by the Hague Tribunal was concluded between Denmark and Holland in February. — Between **France and the Vatican** there has been increasing tension on account of the anti-clerical policy of the French government. It was reported in March that the French premier had declared it to be the intention of the government to denounce the Concordat and prepare for the separation of church and state (see FRANCE). The relations between Austria and Italy have been marked by grave "Irredentist" disturbances in Italy, on account of the refusal of the Austrian government to allow the establishment of a free Italian university at Innsbrück. — In March a treaty was concluded between these two governments for the maintenance of the *status quo* in **the Balkans**, both parties pledging themselves not to undertake territorial occupation in the Balkan states. In November it was announced that the Porte, after much objection and delay, and yielding only to outside pressure, had accepted in principle the Austro-Russian reform scheme for Macedonia presented to the Ottoman government on October 22 (see last RECORD, p. 748). The features of this scheme to which the Porte most seriously objected were the appointment of foreign officers to reorganize the *gendarmerie* in Macedonia, and the appointment of two civil agents or assessors (one Austrian and one Russian) to accompany the inspector-general of Macedonia on his tours, to direct his attention to the needs of the Christian population, to report to him the abuses of local authorities and to keep the two governments informed of important occurrences in the province. Immediately after the announcement of the Porte's acceptance of the plan of reform, the governments of Austria and Russia began negotiations with the other

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powers with a view to the establishment of an international administration in Macedonia along the lines observed in the present government of Crete. The Italian General de Giorgio was appointed to reorganize the *gendarmerie* in accordance with the reform scheme, and the Austrian and Russian consuls-general were charged with the duties of civil agents. In view of the disinclination of the Porte to permit the reorganization of the *gendarmerie* with European officers, the Austrian and Russian governments declared in March that they purposed to resort to force if necessary to carry out the reforms. The other powers concerned have given cordial support to the Austro-Russian policy.

AMERICAN INTERNATIONAL RELATIONS. — Shortly after the revolution of November 3 in **Panama** and its secession from Colombia (see last RECORD, p. 750), it became known that the government of the United States had, on November 2, directed the commanders of the "Nashville" and the "Marblehead," stationed at Colon and Acapulco respectively, to prevent the landing of Colombian troops for the purpose of suppressing the expected uprising. This action was based ostensibly on the right of the United States, under article 35 of its treaty of 1846 with Colombia, to maintain free and uninterrupted transit across the Isthmus. On November 6 the United States consul at Panama was authorized to enter into relations with the provisional government whenever it should be sufficiently established. On November 13 the President received M. Bunau-Varilla as minister from the new republic; and on November 18 a treaty was concluded at Washington by which the United States undertook to guarantee the independence of Panama. The government of Colombia protested against these several steps as unduly hasty, and even charged that the United States had encouraged and aided the revolutionists in their action. On November 7 Colombia asked permission of the government of the United States to land troops for the purpose of maintaining the integrity of her territory, but the request was refused. The Colombian government then despatched General Rafael Reyes to the United States as a special envoy to endeavor to induce the United States government to recede from its position with regard to Panama. General Reyes reached Washington early in December, was cordially received by the President, and is reported to have offered on behalf of Colombia a free canal concession to the United States, provided his government were allowed to employ force to reassert its sovereignty over Panama. The Secretary of State replied that the Panama affair was a closed incident and that "the department was unable to regard the complaints of Colombia as having any valid foundation." The **Hay-Varilla** treaty, which was signed at Washington November 18, was sent to Panama early in December, was promptly ratified by the Junta without change, and was returned to the United States with unusual despatch. It was at once laid before the Senate and was referred to the committee on foreign relations. On January 18 it was reported

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from the committee with three unimportant amendments, which were subsequently dropped to avoid the necessity of sending the treaty again to Panama. During the debates in the Senate various resolutions were proposed by members of the Democratic opposition. The two most notable of these were the Bacon resolution, providing for payment by the United States to Colombia of a pecuniary indemnity for the loss of her territory, and the Culberson resolution, calling upon the President to lay before the Senate all papers relating to the controversy over Panama. After the addition of a clause restricting the call to information the disclosure of which was not deemed incompatible with the public interest, the Culberson resolution was adopted. After rejecting the Bacon resolution, the Senate on February 23 ratified the treaty without amendment by a vote of 66 to 14. All the negative votes were Democratic, but fourteen members of that party voted for the treaty, several Southern legislatures having instructed their senators to vote in favor of ratification. On February 26 ratifications were formally exchanged and a proclamation issued declaring the treaty in force. (For the terms of the treaty see ISTHMIAN CANAL.) — Incidents in the relations of the United States with **Cuba** were the ratification on March 22 of the treaty of May 22, 1903, embodying the provisions of the Platt amendment (see RECORDS of June, 1901, p. 373, and December, 1903, p. 724); the approval by Congress of the reciprocity treaty between the United States and Cuba (see RECORDS for December, 1902, p. 721, and June, 1903, p. 357); and the lapse of the treaty for recognizing the title of Cuba to the Isle of Pines (last RECORD, p. 724). The latter convention was opposed in the Senate on the ground that it did not properly safeguard the interests of citizens of the United States who had taken up their residence in the island and acquired property there. Chiefly through the efforts of Senator Penrose action was postponed until the time limit fixed for ratification had passed. Early in March a new treaty was signed by Secretary Hay and the Cuban minister which provides fuller guarantees for the protection of American interests in the island. During the consideration of this treaty in the Senate, the House of Representatives adopted a resolution instructing its judiciary committee to inquire whether the Senate had authority to ratify, without the approval of the House, a treaty which involved a cession of territory. — In April it was announced that the British government had given notice to the government of **Nicaragua** that it proposed to hold the latter government to a closer observance of the treaty of 1860, by which Nicaragua agreed, in consideration of the withdrawal of the British protectorate, to grant the Mosquito Indians certain rights of local autonomy. — On February 23 the decision of the Hague Tribunal was announced concerning the question of preferential treatment in the collection of claims growing out of the revolution in **Venezuela** (see RECORDS of June and December, 1903, pp. 383 and 751). The tribunal decided in favor of the claims of Great Britain,

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Germany and Italy to preference over other creditors, and entrusted to the United States the duty, not, as has been stated in the press, of enforcing the award, but of attending to the payment by each party of its share of the costs of the arbitration proceedings. — On April 15 Don Cecilio Baez was received by the President as the first minister accredited by the government of **Paraguay** to the government of the United States. — Noteworthy events affecting the relations of the United States with **China** were the ratification by the Senate on December 18 of the commercial treaty concluded October 8 (see last RECORD, p. 723) and the denunciation by the Chinese government of the exclusion treaty which expires December 7, 1904. **New treaties** negotiated were: an extradition treaty with Holland, a naturalization treaty with Hayti, commercial treaties with Abyssinia and Zanzibar, and a treaty with France, extending to Tunis and other French protectorates the application of all the existing treaties between France and the United States. — **Anglo-American relations** since the settlement of the Alaska boundary controversy have been marked by unusual cordiality. In February an amicable settlement of the dispute concerning the ownership of the North Borneo Islands was reached, the United States conceding the British claim (see last RECORD, p. 724). — In the relations of the United States with **Turkey** an episode which attracted momentary attention was the action of the American consul at Alexandretta in hauling down the flag and abandoning his post in December, in consequence of an assault made upon him by the local police. Due apology was made by the Turkish government and the consul returned to his post. — At the outbreak of the Russo-Japanese war President Roosevelt issued a lengthy and detailed **proclamation of neutrality**; and he subsequently issued an order in which he warned all officials of the government to abstain from either action or speech which could cause irritation to either of the belligerents, and directed that due consideration be given not only to the rights but to the susceptibilities of the nations concerned.

II. THE UNITED STATES.

CONGRESS. — In pursuance of the purpose for which the President called Congress together in extra session (see last RECORD, p. 728) the House of Representatives on November 19 passed the bill for putting into effect the **reciprocity convention with Cuba** (see RECORDS of June, 1902, p. 348; Dec., 1902, p. 721; and June, 1903, p. 357). The final vote on the passage of the bill stood 335 ayes to 21 nays, the minority consisting mainly of Republicans from Minnesota and Michigan and Democrats from Louisiana and Texas. The amendments proposed by the Democratic leaders (see last RECORD, p. 728) were rejected. In the Senate it was unanimously agreed that the Cuban reciprocity bill should not be taken up at the extra session, and December 16 was fixed

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as the date on which the final vote should be taken. Having reached this conclusion the Senate leaders demanded an adjournment of the extra session. The House leaders took the position that courtesy to the President required that Congress should perform in the extra session the duty for which that session had been called, and therefore refused to consent to an adjournment. The Senate manifested some indignation at the action of the House, and the Speaker and even the President were denounced by Senators of both parties who resented the attempt to dictate to the Senate its course of action. The House rejoined that the attempt at dictation came from the Senate and refused to recede from its position. Accordingly both branches of Congress kept up perfunctory sessions until the opening of the regular session on December 7. — The merging of the extra session into the regular session raised the question of whether, for the purposes of appointment, a recess could be construed to have existed between the two sessions. Although no appreciable lapse of time occurred the President assumed the existence of a recess, and sent to the Senate the nominations of General Leonard Wood (see INTERNAL ADMINISTRATION) and 167 other army officers as **recess appointments**. This action of the President was the subject of widespread popular comment and a good deal of criticism in Congress, but was upheld by a ruling of the controller of the Treasury. — The **President's message** at the opening of the regular session gave most prominence to praise of the new Department of Labor and Commerce and to a review of the relations of the United States with Colombia and Panama (see INTERNATIONAL RELATIONS above), much space being devoted to a defense of the policy pursued by the administration. Extended reference was made to the various department scandals (see INTERNAL ADMINISTRATION below), naturalization frauds, the increase of immigration, the state of the finances, the condition of the insular dependencies, the settlement of the Alaska boundary controversy, the new army organization, relations with China and Turkey, irrigation and forest preservation. A commission to investigate the condition and needs of the merchant marine was recommended, as were also a revision of the public land laws, an extension of the classified civil service and the bestowal of authority upon the Treasury to deposit the customs receipts in the national banks. The probable early disappearance of the surplus was announced and strict economy in all departments was recommended. — On December 16, the Senate passed the Cuban reciprocity bill by a vote of 57 to 18, one Republican, Bard of California, voting in the negative and seven Democrats voting in favor of the measure. An incident of the debate on the Cuban bill was the adoption by the Democratic caucus of a resolution making decisions of the caucus, when reached by a two-thirds majority, binding on all members, save in certain cases specially excepted from the rule. The greater part of December, January and a part of February were given up to the discussion of relations with Colombia and of the Panama

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canal treaty (see INTERNATIONAL RELATIONS and ISTHMIAN CANAL). Next to these questions the **general appropriation bills** occupied the larger part of the time of Congress. The naval appropriation bill carried $97,000,000 and provided for the construction of one battleship and two first class cruisers, each to cost $4,400,000. An addition of 3,000 men to the personnel of the navy was also authorized. The army appropriation bill carried $75,000,000, the fortification bill $7,963,192, and the pension bill $137,000,000. While the legislative appropriation bill was under consideration, the House in committee of the whole after a general denunciation of the merit system struck out the paragraph for the maintenance of the Civil Service Commission. When the bill was reported, however, the paragraph was restored. An item in the urgency deficiency bill provided for a loan of $4,600,000 to the Louisiana Purchase Exposition. By separate bills $475,000 were appropriated for the Lewis and Clarke Exposition to be held at Portland, Oregon, in 1905, and $250,000 for the extermination of the cotton boll weevil. The total estimated appropriations were $682,773,000, as against $753,058,000 for the preceding year. The principal items of increase were on account of the navy and the post office, the additional amounts being $16,000,000 and $19,000,000. The revenues for the forthcoming year are estimated at $704,000,000.— An important measure affecting the inhabitants of **the Philippines** was passed in April. It extends the application of the navigation laws of the United States to the Philippines and prohibits under penalty of forfeiture after July 1, 1906, the transportation in any but American vessels of any merchandise, between ports of the United States and the Philippines. Another measure affecting the Philippines is designed to encourage railroad building in the islands and offers a guarantee of five per cent on the capital invested to any company undertaking the construction of railroads in the islands. For the purposes of municipal improvements it also authorizes the issue of $5,000,000 in bonds. — On January 20, the House, by a vote of 201 to 68, passed the so-called Hepburn pure food bill which forbade the manufacture and sale in the territories and the District of Columbia of certain foods and drugs which do not possess a certain standard of purity and strength, and forbade their transportation in interstate commerce. The Senate, however, took no action on this measure. On April 19 a bill passed the House by a strict party vote of 147 to 104, providing for the admission to the Union of Arizona and New Mexico as a single state under the name of Arizona; and of Oklahoma and the Indian Territory under the name of Oklahoma. Consideration of this measure by the Senate was postponed until the following session. Affecting the foreign relations of the United States was the adoption by both houses of a resolution authorizing the President to open negotiations with Great Britain for a revision of the joint regulations for the protection of the fur seals in the North Pacific Ocean and in the Bering Sea; also a resolution inviting the Interparlia-

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mentary Union for International Arbitration to hold its next annual meeting at St. Louis, and appropriating $50,000 for the expenses of the meeting. — Bills favorably reported by Senate committees were: a bill to protect the President by imposing the death penalty upon any person wilfully killing the chief executive or any official entitled to succeed him; a bill to establish at the Ellis Island immigration station a bureau of information; a bill to place an inspector and a surgeon at each of the principal foreign ports from which immigrants for the United States embark; and a bill to repeal the timber and stone public land act. Reported favorably by House committees were: a bill to create a merchant marine commission; a bill granting to the states police power over original packages of liquor imported from without their limits; a bill authorizing the President to negotiate with certain European powers to secure equality of treatment of Jewish citizens while traveling abroad on American passports; and a resolution recommending the impeachment of Charles Swayne, federal district judge of Florida, for corruption, absenteeism, incompetency and the wasting of the assets of bankrupts. Important bills affecting labor which were the subject of prolonged discussion in committee were: a bill to limit the use of the injunction in labor disputes, a bill to create a permanent arbitration board to settle labor disputes affecting interstate commerce, and a bill to extend the application of the eight-hour law. The eight-hour bill was referred to the Secretary of Commerce and Labor for investigation and report, and the injunction bill was postponed until the following session. — Senator Burton of Kansas was convicted by the United States district court at St. Louis of accepting pay from a company of questionable character for the use of his influence with the Post-Office Department to prevent the issue of a fraud order against the company and was sentenced to imprisonment for six months. Senator Dietrich of Nebraska was tried on the charge of bribery in connection with a post-office appointment, but was not convicted. — The consideration by the Senate Committee on elections of the case of Reed Smoot, Senator elect from Utah, extended into an investigation of the attitude of the Mormon church and the practice of leading Mormons in the matter of polygamy, and excited great popular interest. — Senator Hanna of Ohio died in February and Representative Dick was elected as his successor. Representative Shafroth of Colorado voluntarily relinquished his seat upon discovering that his election had been accomplished by fraudulent means. — Congress adjourned April 29, the legislative output for the session being 1,100 measures, of which less than 150 were public acts. (See also INTERNAL ADMINISTRATION, ISTHMIAN CANAL, DEPENDENCIES and TRUST QUESTION.)

INTERNAL ADMINISTRATION. — The investigation of the **frauds in the postal service** (see last RECORD, p. 726) has continued to excite general interest. The report of Mr. Bristow, fourth assistant postmaster-general, which was made public November 29, showed the

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existence of a widespread conspiracy to defraud the government. The report estimated the losses at several millions of dollars, the conspirators' share of the booty being between $300,000 and $400,000. In consequence of these discoveries, four officers of the government resigned, fourteen were removed and forty-four indictments were found. On December 16 the results of the investigations of Messrs. Conrad and Bonaparte, special counsel for the government, were announced. Their report confirmed the charges of S. W. Tulloch, a former employee in the Washington post-office, that official pay-rolls had been falsified for the purpose of rewarding favorites; it placed the responsibility for the frauds upon a number of high officials, including a former postmaster-general; and asserted that the frauds mentioned had extended back for a period of three years. In January, ex-Congressman Driggs of Brooklyn was convicted in the United States circuit court of having accepted $12,500 from a manufacturing concern for using his influence to secure a contract for cash registers, a part of this sum having been paid to the superintendent of salaries and allowances in the Post-Office Department. Mr. Driggs was sentenced to prison for a nominal term and to pay a fine of $10,000. On February 26 an ex-superintendent of the rural free-delivery service and three other individuals were convicted of conspiracy to defraud the government in postal contracts. Heavy sentences were imposed upon them. — The report of an investigation undertaken by the House committee on post-offices was made public early in March. It mentioned by name 140 senators and representatives as guilty of improprieties in using their influence with officials of the department to secure increases in the salaries of postmasters, additional clerk hire and advantageous leases of buildings for postal purposes. The reading of the report in the House on March 7, created a sensation and evoked from the members whose names appeared on the list angry denunciations of those who were responsible for the accusations. The appointment of a special Congressional committee to investigate the charges against the accused members was demanded; a resolution to this effect was passed; and on March 12 the speaker appointed a committee of seven members under the chairmanship of Mr. McCall of Massachusetts. On April 12 the committee made its report, exonerating the accused members from the charges of improper conduct. — The report of Messrs. C. J. Bonaparte and C. R. Woodruff, who were appointed by the President to investigate the alleged **abuses and irregularities in the Indian service** (see last RECORD, p. 727), was made public on March 7. The report charged certain members of the Dawes commission with engaging in business transactions affecting the Indians which were highly improper if not corrupt, and it asserted that certain trust companies were defrauding the Indians of their lands. It recommended the early abolition of the Dawes commission, until which time its members should be prohibited from engaging in business operations in the Indian Territory. An

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order to this effect was issued by the President, whereupon two of the members, Messrs. Stanley and Breckinridge, tendered their resignations. — On February 28 the report of the special commission appointed by the President to investigate the conditions in the **immigrant service** at New York (see last RECORD, p. 727) was made public. The report exonerated the immigration officials from the charges of maladministration, but asserted that the detention facilities at Ellis Island were wholly inadequate. A number of recommendations were made looking to the removal of certain features of the administration which have tended to work hardship, injustice and inconvenience to immigrants. — The commission appointed by the President on October 22, 1903, to investigate the necessity for **revision of the public land laws** of the United States, completed its labors in March. It recommended the repeal of the timber and stone act and the substitution of provisions for the sale of timber on public lands when needed for industrial purposes (see CONGRESS). — Important executive orders were issued requiring a half-hour's extra service each day on the part of all government clerks in the departments at Washington, and making eligible to graduated pensions, under the act of June 27, 1890, all surviving Federal soldiers of the Civil War who shall have reached the age of 62 years. The latter order has been the subject of much criticism: in view of the refusal of Congress to pass an act allowing a service pension it has been denounced as a usurpation of legislative authority. A resolution was adopted by the Senate calling upon the Secretary of the Interior for a copy of the order and for an estimate of the increase of pension payments under the ruling. The Secretary estimated the increase at $5,400,000 a year. — The divisions and departments of the **army** have been rearranged. In future there are to be five divisions: the Atlantic, the Northern, the Pacific, the Southwestern, and that of the Philippines. The following retirements and promotions are to be noted. General Young retired as chief of staff January 9, and Lieutenant-General Chaffee was appointed as his successor. Brigadiers-General Wood, Gillespie, Bates, Randolph and Kobbe were promoted to be majors-general, and the three last mentioned were at the same time retired. The first of these promotions, that of General Leonard Wood, aroused much opposition in the Senate and was the subject of popular discussion throughout the country, it being charged that the promotion was a flagrant example of favoritism and an injustice to older officers in the service. After a prolonged investigation of General Wood's military career as well as his personal character by the Senate committee on military affairs, the appointment was confirmed by a vote of 45 to 16. — Other important **federal appointments** were those of William H. Taft of Ohio, as Secretary of War, to succeed Elihu Root, resigned; Luke E. Wright of Tennessee, as civil governor of the Philippines (see last RECORD, p. 725); Henry C. Ide of Vermont, as vice-governor of the Philippines; W. C. Forbes of Massachusetts, as a member

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of the Philippines Commission; John C. Black of Illinois, as a member of the Civil Service Commission, to succeed John R. Proctor, deceased; Joseph W. Fifer of Illinois, as a member of the Interstate Commerce Commission (a reappointment); J. C. Pritchard of North Carolina as United States circuit judge for the fourth district; John Barrett of Oregon as minister to the Republic of Panama; Arthur M. Beaupré, as minister to the Argentine Republic; William L. Russell, as minister to Colombia. In March Commander George L. Dyer of the Asiatic fleet was assigned to duty as naval governor of the Island of Guam, to succeed Commander W. E. Sewell, deceased. (For Panama Canal Commissioners, see ISTHMIAN CANAL.)

THE DEPENDENCIES. — In the **Philippines** the negotiations for the purchase of the friars' lands (see RECORDS of December, 1902, p. 723, and June, 1903, p. 359) were brought to a successful conclusion on December 22. Under the terms agreed upon, all the agricultural lands of the friars except 10,000 acres are transferred to the government of the Philippines in consideration of a cash payment of $7,239,000. It is announced to be the policy of the government to sell the lands thus acquired — about 400,000 acres — as far as possible in small holdings and at low rates, preference being given to the present occupants. The proceeds of the sales are to be turned into the insular treasury and to be applied to the establishment of churches, schools, and charitable institutions. The vexatious problem of the removal of the friars has solved itself by their voluntary withdrawal: it is estimated that not more than 200 still remain in the islands. Meantime the Americanization of the Roman Catholic church in the island is proceeding apace. The annual **report of the Philippines Commission** was made public on February 1. It recommended that the tariff on sugar and tobacco imported into the United States from the Philippines be reduced to not more than 25 per cent of the rates imposed by the Dingley act; that the commission be authorized to issue bonds for permanent improvements to an amount not exceeding $5,000,000; that the commission be invested with the control of commerce among the islands of the archipelago; that the law which exempts the Philippines from the application of the United States laws concerning the coasting trade be renewed; that the commission be empowered to encourage the investment of capital in the construction of railroads by a guaranty of income not exceeding four per cent annually on the amount invested; that the amount of land which corporations shall be allowed to hold be increased from 2,500 to 25,000 acres; and that the mining laws be amended in several particulars. With regard to the general condition of the Philippines, the commission reported that the distress caused by crop failures, the cholera epidemic and the rinderpest among the live stock (see RECORD of June, 1903, p. 358) has largely disappeared; that ladronism has almost ceased; that the facilities for education have been multiplied and school attendance largely increased;

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and that the economic and industrial development of the islands requires the construction of more railroads. A formal effort was made in March by the Secretary of War to interest New York capitalists in the proposed scheme of developing the railroad facilities of the islands, but the result was not encouraging. In November a condition bordering on anarchy was reported to exist in the **Moro provinces**, chiefly on account of a new uprising of the inhabitants. In a running fight lasting five days General Wood inflicted a severe defeat upon the rebels of Jolo, killing more than three hundred of their number. On March 14 General Wood again defeated a Moro band at Catabolo, the capital of Mindanao, killing one hundred of their number and capturing a large amount of ordnance and ammunition. It having been discovered that the sultan of Sulu was implicated in the revolt of the Moros and was otherwise largely responsible for the disturbances, the United States formally notified him on March 2 that the Bates treaty of August, 1899 (see RECORD of December, 1899, p. 742), which granted a limited autonomy to the Moros and which provided official salaries for the sultan and several of the dattos should henceforth be considered as abrogated. Meantime the Philippine Commission had already promulgated a law prohibiting slavery, the practice of which in the Moro provinces was recognized by the Bates treaty. Disturbances have also occurred in Samar, and in February a lieutenant and six constabulary privates were killed by Moslem fanatics. The new governor, General Luke E. Wright, was inaugurated February 1. (For legislation affecting the Philippines, see CONGRESS.) — The legislature of **Porto Rico**, at the session which ended early in March, passed several important laws. These were: an act adopting the American system of civil procedure; an act creating a commission to negotiate a loan of from $3,000,000 to $5,000,000 for permanent improvements; an act increasing the rate of taxation on rum; an act establishing an educational qualification for the suffrage; an act to prevent the desecration of the American flag; and an act extending the public school system. Great educational progress is reported, but widespread business and industrial depression exists, chiefly on account of unfavorable labor conditions. Porto Rican trade with the United States continues to increase, the annual volume having risen from $4,000,000 in 1897 to $22,000,000 in 1903. Worthy of note was a resolution of the United States House of Representatives on February 2 extending to the resident commissioner at Washington the legislative privileges of a territorial delegate. An act of Congress affecting the educational interests of the island was passed in April providing for the bringing to the United States on government transports of 600 Porto Rican teachers to attend the various summer schools. In April the resignation of the governor of Porto Rico was announced. Winthrop Beakman was nominated as his successor. — The needs of **Alaska** have been the subject of an investigation by a Congressional committee. Various reforms are recom-

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mended; among others, the creation of another judgeship for the territory, a revision of the mining laws, the repeal of the game laws and the adoption of measures for the encouragement of better transportation facilities.

THE ISTHMIAN CANAL. — The greatest of the preliminary obstacles to the construction of an interoceanic canal has been removed by the conclusion of the **Hay-Varilla treaty** with the republic of Panama (see last RECORD, p. 725; also INTERNATIONAL RELATIONS and CONGRESS above). The new treaty follows the general lines of the Hay-Herran convention with Colombia (see RECORD of June, 1903, p. 365), except that more liberal concessions are granted to the United States. A strip of territory five miles in width on each side of the canal (excepting the cities of Panama and Colon) and three marine leagues at each end, together with any other lands that may be necessary to the construction and maintenance of the canal, are ceded to the United States with full power of sovereignty over such lands. Panama further grants to the United States the use of all navigable waters outside of the canal zone so far as may be necessary or convenient for the construction, maintenance or sanitation of the canal, and also a perpetual monopoly of any existing system of communication across Panama between the Caribbean sea and the Pacific ocean. In consideration of this grant the United States agreed to guarantee and maintain the independence of Panama and to pay its government $10,000,000 in cash and an annuity of $250,000 beginning nine years after the date of the ratification of the treaty. — Shortly after the ratification of the treaty the government of Colombia instituted suit in a French court, the first tribunal of the Seine, to restrain the Panama Canal Company from transferring its franchises and other property to the United States, both on the ground of Colombia's interest as a shareholder in the company (Colombia owns 50,000 of the 650,000 shares) and on the ground that the company could not transfer its franchises and property without the sovereign consent of Colombia. On March 31 the court decided against the contention of Colombia. The last of the obstacles in the way of the transfer to the United States of the legal title to the property of the Panama Canal Company having been removed, agents of the Department of Justice were dispatched to Paris to make final arrangements for the transfer, and these were completed on April 23. — On February 29 the President sent to the Senate the names of the **members of the Commission** charged with the construction of the canal. They are: Chairman, Rear Admiral John G. Walker, District of Columbia; Major-General George W. Davis, District of Columbia; William Barclay Parsons, New York; William H. Burr, New York; Benjamin M. Harrod, Louisiana; Carl Ewald Grunsky, California; Frank J. Hecker, Michigan. On March 8 the President gave the commissioners their instructions and on March 29 they sailed for Panama, to make arrangements for beginning the preliminary work of sanitation and the

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erection of the necessary buildings. On March 3 the Secretary of the Treasury issued a call upon the depository banks for twenty per cent of their holdings (aggregating about $30,000,000) with which to meet payments on account of the Panama Canal. On April 21 the House passed unanimously a bill for the **government of the canal zone**. It is identical with the act of 1803 drafted by Jefferson for the government of the Louisiana Territory and vests full power of government in the President until the expiration of the Fifty-eighth Congress. The Senate passed a bill much more comprehensive in its nature, but finally accepted the House bill.

THE FEDERAL JUDICIARY. — In the case of South Dakota *v.* North Carolina, a suit against the latter state for the payment of certain repudiated bonds which had been assigned to the plaintiff state by an individual owner, the Supreme Court held that it had jurisdiction, awarded the judgment sued for and decreed that payment should be made by January 1, 1905. — In the case of Gonzales *v.* Williams, decided January 4, the Supreme Court held that citizens of Porto Rico are not aliens to the United States and therefore cannot be excluded as such from admission to the mainland of the United States. This decision overruled the opinion of the circuit court that the plaintiff was an alien in the sense of the Immigration Act of 1891, which denies admission to aliens likely to become public charges. In the case of Royal Insurance Company *v.* Ruperto Martin, decided January 11, the Supreme Court held that the act of 1900 establishing a civil government for Porto Rico allows appeals to be taken directly from the United States district court for Porto Rico to the Supreme Court without hearing by intermediate tribunals. — A decision affecting the rights of publishers was rendered by the Supreme Court on April 11, holding that books issued periodically cannot be sent through the mails as second-class matter under the name of periodicals. — In the case of Butterfield *v.* Stranahan, decided February 23, the Supreme Court upheld the power of Congress to prohibit the importation of tea not showing a certain standard of purity. A decision affecting the administration of the customs service was that rendered in the "rupee case," in which the Supreme Court held that in estimating the value of the Indian rupee for customs purposes the general board of appraisers and not the Secretary of the Treasury is the final authority. — A case that aroused considerable popular interest was that of John Turner, an English anarchist, who was detained upon his arrival at the New York immigrant station in October last and subsequently ordered to be deported. His petition for a writ of *habeas corpus* being denied by a United States circuit court, he appealed to the Supreme Court, and on February 29 an order was made for his release on bail. (For the decision of the Supreme Court in the Northern Securities case, see THE TRUST QUESTION. See also LABOR AND CAPITAL and NEGRO PROBLEM.)

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THE TRUST QUESTION. — On March 14 the United States Supreme Court rendered its decision in the **Northern Securities Case.** (For the history of this case see RECORDS of June, 1902, p. 354; December, 1902, p. 727; June, 1903, p. 367; and December, 1903, p. 733.) The oral arguments in the case were heard on December 14 and 15. The defendants attempted to show that the purpose of the Northern Securities Company in acquiring the stock of the Great Northern and Northern Pacific railroads was not to restrain trade and commerce among the states but to create and enlarge it; that the acquisition by the Northern Securities Company of a majority of the shares of stock of the two railroads was not prohibited by the Anti-Trust Act of 1890; and that if the said act did prohibit such acquisition it was unconstitutional, since Congress has no power to regulate the transfer and ownership of shares of stock in state corporations. By a majority of five to four the Supreme Court affirmed the decision of the circuit court of appeals of April 9, 1903 (see RECORD of June, 1903, p. 367) which had held that the acquisition of the stock of the two railroad companies was in restraint of trade and commerce among the states and which had enjoined both companies from transferring their stock to the Securities Company. The majority opinion, which was delivered by Justice Harlan, conceded that the purpose of the merger might have been the creation and promotion of trade among the states and that the motives of the organizers might have been unselfish, but held that, inasmuch as a combination had been formed which possessed the power to suppress competition and restrain trade and commerce, it was a violation of the act of 1890. The opinion also affirmed the doctrine of the Trans-Missouri freight case that the Sherman act is not limited in its application to contracts and combinations in unreasonable restraint of trade, but applies to all such contracts whether reasonable or unreasonable. Justice Brewer, while concurring with the majority in its decision as to the illegality of the merger, dissented from that part of the opinion which held that the Sherman act applies equally to reasonable and to unreasonable restraints. Chief Justice Fuller and Justices White, Peckham and Holmes dissented from the decision of the majority. Their views were expressed in two separate opinions. Justice Holmes protested against the decision of the majority on the ground that it interfered "with the exercise of powers incidental to the ownership of property," and Justice White declared that mere ownership of stock in a state corporation could never be construed as an interference with interstate commerce. On April 11 the Supreme Court dismissed the suit brought by the state of Minnesota against the Northern Securities Company on the ground of lack of jurisdiction. — In the case of Montague *v.* Lowry, decided in February, the Supreme Court held that an agreement of Eastern manufacturers of grates, mantels and tiles to sell only to certain Western dealers at a particular price and to charge others a higher price was in conflict with the Sherman act. — In April the Supreme

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Court decided, in the case of the anthracite coal-carrying railroads of Pennsylvania, that the Interstate Commerce Commission had power to compel the defendants to produce certain contracts and other papers relating to their traffic agreements. — An important decision under the Anti-Trust Act was rendered by the United States circuit court of appeals at Cincinnati on December 9, in the case of Atlanta *v.* Chattanooga Pipe and Foundry Works. By this decision the City of Atlanta was awarded triple damages against the pipe trust on the ground that by concerted bidding of its members it secured a contract for supplying pipe at rates considerably above the market price. — In response to a resolution of the House of Representatives, calling for information regarding the use made of the $500,000 appropriated by Congress at the last session for prosecuting offenders against the federal anti-trust statutes (see RECORD of June, 1903, p. 367), the Attorney-General reported on January 13 that $25,985 of the appropriation had been expended, the greater part of which was applied to the prosecution of the suits against the Northern Securities Company and against the beef trust (see last RECORD, p. 733). He further reported that injunction suits were proceeding in equity under the Anti-Trust Act against fourteen railroad companies, and that several other suits against manufacturers' combinations were pending. By act of Congress the Attorney-General was authorized to employ the unexpended balance in the prosecution of further violations of the federal anti-trust statutes. — A widely discussed anti-trust measure is the **Foraker Amendment** recently introduced in the Senate, which proposes to abolish that part of the Interstate Commerce Act which applies to foreign commerce and to restrict the application of the Sherman act to contracts which are in unreasonable restraint of trade. In response to a resolution of the House of Representatives passed in March the Department of Commerce and Labor has begun an investigation of the operations of the beef trust.

LABOR AND CAPITAL. — A strike of coal miners in Colorado began early in November and lasted about five months. The miners demanded a twenty-five per cent increase of wages, an eight-hour day and the exclusive employment of union labor. These demands were refused by the operators, who, however, offered to compromise the dispute on liberal terms. The miners rejected these terms notwithstanding the advice of Mr. Mitchell, president of the United Mine Workers' Association, to the contrary. The attempt of the strikers to prevent the employment of non-union men led to disorders and violence, and on December 4 the governor placed the Cripple Creek region under martial law and adopted drastic measures to maintain the peace. Several other places, notably Victor, Telluride and Trinidad were subsequently placed under martial law, a press censorship was established, and the militia was called out and placed in control. Hundreds of armed strikers were arrested and imprisoned, several encounters between the strikers and the militia oc-

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curred, a number of secret assassinations took place, and considerable mining property was destroyed by dynamite. Business in the mining districts was for a time paralyzed although, as a result of the vigorous course pursued by the governor, the mines resumed operations with non-union employees. The President, being appealed to for federal assistance, ordered General Bates to make an investigation of the troubles for the information of the government. He reported that the conditions fully justified military interference, but that the state government was able to control the situation. At the close of the period under review the mines were running to their full capacity and the strike seemed likely to fail, but the disorders still continued. — A strike of the soft coal miners of the United States was threatened in March in consequence of the failure of the joint conference of miners and operators, which met at Indianapolis March 1, to reach an agreement upon a wage scale for the ensuing year. The operators offered to renew the wage scale for two years upon the basis of a reduction of five and one-half per cent in wages, which reduction they said was made necessary by the decrease of profits. President Mitchell urged the acceptance of the terms, but the convention rejected them and threatened to strike. On March 15 the terms proposed by the operators were submitted by way of referendum to the bituminous miners (190,000 in all) of the nine states concerned and were accepted by a large majority of those voting. — The city of Chicago was afflicted with two labor strikes in November. One of these was a **strike of street-railway employees** for a small increase of wages, for the exclusive employment of union labor and for the settlement by arbitration of the questions in dispute. The railway company declared that the demands for increased pay were unjustified and that it would not submit to arbitration the workers' demand for the "closed shop." Finally a basis of compromise was agreed upon chiefly to the advantage of the company, and the strike was declared off. The other Chicago labor difficulty was a **strike of livery drivers**, which was accompanied by disgraceful interferences with funerals. — A protracted **sympathetic strike of bricklayers** was the disturbing feature of the labor situation in New York City, the bricklayers demanding recognition of the Laborers' Protective Association and the employment of none but union laborers. Important **judicial decisions affecting labor** were: a decision of the United States Supreme Court on November 30, upholding a Kansas statute which provided an eight-hour day for labor on all public works (Atkin *v.* Kansas); a decision of the New York court of appeals in the case of People *v.* Lochner, affirming the constitutionality of a statute which prescribes ten hours as the maximum working day of journeymen bakers; decisions of the appellate division of the New York supreme court affirming the constitutionality of the tenement house law and the compulsory school attendance law; a decision of the supreme court of Illinois in the case of Mathews *v.* the People, deny-

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ing the constitutionality of the act of 1889 creating a free employment bureau, on the ground that the clause which forbade the furnishing of lists of applicants for employment to employers whose employees are on strike was unjust discrimination. (For federal legislation affecting labor, see CONGRESS.)

THE NEGRO PROBLEM. — During the period under review various aspects of the negro question have been the subject of discussion in Congress, in the state legislatures and in the press. In Maryland the legislature has adopted a proposed constitutional amendment, which has for its purpose the disfranchisement of the negro race. It requires as a qualification for voting ability to read any section of the state constitution and to give a reasonable explanation of the section read. Exempted from this requirement are all persons who were entitled to vote on or before January 1, 1869, or who are descendants of such persons. A law was also passed by the legislature of Maryland requiring railroads and steamboats to provide separate accommodations for colored passengers. In Mississippi a similar law was passed with regard to street railways. In the latter state was enacted also a stringent vagrancy act, directed primarily against the large increase of colored vagrants. — An attack upon negro education was made by the governor of Mississippi in a message vetoing a bill for the support of a normal school for colored teachers. In Kentucky a bill was passed prohibiting co-education of white and colored students, the measure being directed primarily against Berea College. — Several **judicial decisions** affecting the rights of colored citizens have been rendered by the federal courts. In the case of Giles *v.* Board of Registrars (see RECORD of June, 1903, p. 364) in which the suffrage provisions of the Alabama constitution were attacked as being in violation of the federal constitution, the Supreme Court of the United States decided that it had no jurisdiction, because the federal question had not been properly raised. In Smith *v.* State (77 S. W. 453) the district court of the United States for the district of Texas held that in a case where all the jury commissioners were white and all the jurors selected were of the same color, although a fourth of the population were negroes, a colored defendant was denied equal protection of the laws. — In several parts of the South, notably in Mississippi and Arkansas, there has been a recrudescence of the **White Cap** movement against negroes. In Arkansas three "white cappers" were convicted and punished. **Peonage cases** have been reported in Georgia, Louisiana and Mississippi, and a number of white planters have been indicted by federal grand juries. — **Race Riots** have occurred in Texas and Arkansas; in the latter state thirteen negroes were reported to have been killed. — During the period under review some thirty odd negroes were reported to have been lynched, all the cases with one exception occurring in the southern states. All the victims were males except two. The majority of the offenses were murder of white men, the rest being assaults

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upon white women. The lynching parties were composed of white persons and the victims were black in every case except one. In five or six cases the method of punishment was burning at the stake, which in two instances was accompanied by other forms of torture. In Springfield, Ohio, where a negro who had murdered a police officer was forcibly taken from the jail by a large mob and hanged to a telegraph pole, the affair was followed by serious disorders, which led the governor to call out eight companies of militia to maintain the peace. Worthy of record is the prompt and vigorous action of the governor of Mississippi, who took personal command of the troops on two different occasions and prevented the lynching of several negroes. The governor of Virginia also prevented the lynching of a negro who had committed a particularly fiendish crime upon a white woman in Roanoke. Through the efforts of the governor of Virginia a law was passed which provides that the testimony of women who have been made the victims of criminal assault need not be given in open court, but may be taken by deposition and read to the jury.

NATIONAL POLITICS. — The national committee of the Republican party met at Washington in December, selected Chicago as the place for the meeting of the Republican convention and fixed June 21 as the date. The Democratic national committee met on January 12, and decided upon St. Louis as the place and July 6 as the date for the holding of the Democratic convention. The death of Senator Hanna in February left President Roosevelt as the only Republican candidate openly and strongly supported; and as nearly one-half of the total number of delegates have been instructed for him, his nomination seems practically assured. In the Democratic ranks there has been no such preponderance of sentiment with regard to any single candidate. The movement to renominate ex-President Cleveland for a third term was checked by an announcement from him that he would not consent to be a candidate. At the same time it appeared to be the general sentiment of the party that Mr. W. J. Bryan should not be renominated. At the close of the period under review the Democratic candidates most prominently mentioned were Alton B. Parker and W. R. Hearst of New York, Parker seeming to be in the lead.

STATE LEGISLATION. — In Louisiana and Mississippi large appropriations were made for exterminating the boll weevil (see also CONGRESS). In Massachusetts an act was passed to protect playwrights. In Mississippi provision was made for a state text-book commission charged with selecting a uniform series of text-books for the public schools of the state. An important measure of the New York legislature was the "unification bill" to place the administration of all public elementary education under the control of a single commissioner. In New Jersey, besides factory and tenement house legislation, acts were passed for amending the corporation laws, for creating the office of state auditor

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and for instituting a department of law. In Ohio the enactment of a uniform school law has been one of the difficult problems before the legislature. — Judicial decisions of state courts were rendered in Kansas, denying the constitutionality of the sugar bounty act of 1895, and the newspaper libel law of 1901; in Missouri, holding that an attempt to induce a member of the board of health to vote in favor of awarding a particular contract was not bribery when the board was without legal authority to let the contract (Missouri *v.* Butler); in Ohio denying the validity of the usual suicide clause in life insurance policies (Hammer *v.* Ætna Company); in Oregon, holding that the initiative and referendum amendment to the constitution is not inconsistent with a republican form of government; in Texas, holding the local option liquor law unconstitutional; in New York, upholding a statute requiring tenement house owners to substitute a different system of sewerage from that in use (Tenement House Commissioners *v.* Moeschen) and denying the liability of cities for damages on account of injuries sustained as a result of the suspension of an ordinance forbidding fireworks (Landau *v.* City of New York). — Of municipal interest was the Chicago election in favor of municipal ownership of the street railways (see last RECORD, p. 739). — For legislation on special subjects separately noted above, see TRUST QUESTION, LABOR AND CAPITAL, and NEGRO PROBLEM.

III. LATIN AMERICA.

In **Cuba** the event of chief importance was the election of members of Congress and of the provincial councils. A Republican majority in both houses of Congress was again secured, although the Liberals gained several seats in the lower house. The election was unexpectedly quiet, but frauds were discovered in the returns from several of the large cities. Of interest in the field of legislation was the president's veto of a bill to continue the state lottery, and a decree increasing the rates of customs duties, especially on a large number of food products. The latter measure was criticized in the United States on account of alleged discrimination against American products in favor of those of Europe. Measures were passed for the establishment of legations and consulates in Europe and for the payment of the revolutionary war bonds. (For the progress of the negotiations with the United States regarding the Isle of Pines, see INTERNATIONAL RELATIONS.) — The new republic of **Panama** has been recognized by most of the governments of Europe and America, and Colombia has apparently abandoned all efforts to recover her lost province (see INTERNATIONAL RELATIONS). In February a constitutional convention was held, a constitution was framed and adopted, and on February 16, the constitution was officially promulgated by the provisional government. On the same day Dr. Manuel Amador, one of the revolutionary leaders and minister of finance under the provisional

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government was elected first president of the republic and was inaugurated on February 20. — In **Mexico** the question of paramount interest was that of currency reform. A committee of the national monetary commission has recommended the gradual introduction of the gold standard which, it is understood, will be adopted at an early date. Other measures affecting business interests are a new banking law, requiring banks to maintain a balance between outstanding notes and cash on hand and establishing a system of inspection to insure the maintenance of such balance; and a decree increasing the import duties on a large number of manufactured articles. — The chief political event in **Colombia** was the election on February 2 of General Rafael Reyes as president of the republic. Laws were passed, establishing as the monetary unit a gold dollar of the same metallic content as that of the United States and prohibiting the issue of paper currency, and making a considerable increase in the tariff rates on imports. (For the relations of Colombia with the United States as regards Panama, see INTERNATIONAL RELATIONS). — During the period under review Latin America was afflicted by the usual number of revolutions. The most noteworthy of these was the revolution in **Santo Domingo**, which has been in progress since November last. In December the government of General Wos y Gil was overthrown and was succeeded by a provisional government under General Morales. Thereupon a revolution under the leadership of one General Jiminez, a former president of Santo Domingo, broke out against the Morales government and has been in progress for several months. The United States partially recognized the provisional government of Morales on the understanding that the latter would observe all agreements concluded with the United States by previous Dominican governments. A condition amounting almost to anarchy has prevailed in the island. Several American merchant vessels and an American man-of-war were fired upon by the revolutionists, and an American naval machinist was killed. Acting under instructions from Washington, the American naval commander bombarded the town of Pajarito, a rebel stronghold, on February 11 and landed 300 marines for the purpose of punishing the insurgents and protecting American interests. In **Uruguay** also a civil war has been in progress, the effect of which has been to paralyze commerce and industry. Twelve thousand government troops have been under arms and several battles have been fought with heavy losses on both sides. — A long-standing dispute between **Chile** and **Peru** with regard to the permanent ownership of the provinces of Tacna and Arica has broken out anew on account of the threat of the Chilian congress to make the Chilian possession of them definitive (see RECORD of June, 1901). — An arbitration treaty has been concluded between **Bolivia** and **Peru** for the settlement of a boundary dispute.

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IV. EUROPE.

GREAT BRITAIN AND IRELAND. — Mr. Chamberlain's proposed change in the fiscal policy of the empire (see last RECORD, p. 736) has continued to occupy the paramount place in British politics. During the period under review the ex-colonial secretary delivered many speeches in support of his proposals for tariff reform and succeeded in winning victories in several parliamentary by-elections in December. In January, however, he met with two notable defeats in by-elections at Norwich and Gateshead. A much discussed campaign project of Mr. Chamberlain's was the selection of an unofficial "commission" consisting of sixty or more persons, prominent in commercial and industrial pursuits, to consider the tariff question in its various aspects and recommend the basis of a protective system for the empire. In the colonies as in the United Kingdom Mr. Chamberlain's proposals have constituted the chief subject of discussion, and there, as in England, opinion is divided upon the merits of the proposed change. — **Parliament** opened on February 2. The speech from the throne referred to the unusually cordial relations existing between Great Britain and the countries of continental Europe (see INTERNATIONAL RELATIONS); reviewed the military operations in Somaliland (see AFRICA); expressed regret at the war in the East and declared the readiness of Great Britain to afford any assistance which it could "usefully render towards the promotion of a pacific solution"; referred to the Thibetan mission and the situation in the Balkans (see INTERNATIONAL RELATIONS), and alluded to the "deep concern" which the government felt on account of the cotton shortage and the increased burdens of military and naval defense. The speech announced that bills would be introduced for restricting immigration; for amending the liquor license law, the tax assessment law, the Scotch education law, the fisheries act, the labor law, the workingmen's compensation act and the public health law; for regulating the hours of employment in shops; and for removing the necessity for re-election in case of acceptance of office by members of the House of Commons. In the early days of the session the **strength of the government** was put to the test by several motions brought forward by the opposition. The first of these was an amendment proposed by Mr. John Morley to the address in reply to the speech from the throne declaring that a return to protective duties, particularly if these should be imposed upon foodstuffs, would be deeply injurious to the national welfare. After a week or more of exciting debate the motion was rejected on February 15 by a vote of 327 to 276, or about half the normal government majority, thirty of the unionists and all the Irish members voting against the government. A motion to censure the government for its conduct of the South African war was defeated by a majority of 86 votes and a motion condemning the introduction of Chinese labor into the Transvaal (see

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AFRICA) was rejected by a majority of fifty-one votes. After rejecting an amendment asking for important changes in the Irish Land Act (see last RECORD, p. 737) the address was agreed to on February 19. Early in the session the Irish leaders demanded home rule concessions, the amendment of the Land Act and the establishment of an Irish University; and upon the refusal of the cabinet to yield to their demands they announced their intention of joining the opposition. **The defection of the Irish members** together with the division of the Unionists has led to the general belief that a dissolution of Parliament cannot be long postponed. Among the measures which have reached an advanced state on the parliamentary calendar is a resolution adopted by the House of Commons on February 16, in favor of giving the parliamentary franchise to women. Less encouraging to the feminist movement was the decision of the House of Lords debarring women from the right to practice law. The budgetary statement for 1904–05 places the estimated expenditures at $714,000,000 and the receipts at $695,300,000, leaving a deficit of about $19,000,000. $185,000,000 of the expenditures are for the navy and $145,000,000 for the army. The campaign against the Mad Mullah (see AFRICA), the Thibetan expedition (see INTERNATIONAL RELATIONS) and the purchase of two Chilian battleships accounts for most of the increased expenditures. In April it was announced that the government had decided to restore the duties on grain abolished last year (see RECORD of June, p. 373), and to increase the duty on tea by two pence per pound and the income tax by one penny in the pound. Both the army and navy estimates were passed by narrow majorities. An important measure which the government has undertaken to carry through Parliament provides for a comprehensive scheme of **army reform.** It is based upon the recent report of the royal commission on army reform and provides for the creation of a permanent staff to give cohesion and continuity to the defence committee; the abolition of the office of commander-in-chief and the substitution in its place of an army council of seven members; an organized system of inspection under the control of an inspector-general; the enlargement of the defence committee by the addition of a secretary, two military officers and two naval officers. Miscellaneous incidents have been the opposition of the non-conformists to the Education Act (see RECORD for December, 1902, p. 731), the release of Colonel Arthur Lynch who was sentenced to life imprisonment for treason (see RECORD of June, 1903 p. 372) and an organized movement to encourage cotton-growing in the British colonies.

THE BRITISH COLONIES AND INDIA. — In **Canada** measures were enacted at the last session of the Dominion parliament for the reduction of the public debt, for a second continental railroad, for subsidizing a proposed line of steamers between Canada and France, and for increasing the militia to 100,000 men. Worthy of mention was the refusal of the government to join in the protest of the premier of New Zealand

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against the introduction of Chinese labor into the Transvaal (see AFRICA). Subjects of popular discussion have been Sir Wilfred Laurier's declaration, following the decision in the Alaska boundary case (see last RECORD, p. 723), that Canada should possess the full treaty-making power, and Mr. Chamberlain's fiscal proposals (see last RECORD, p. 736). (For the settlement of the Newfoundland French shore fisheries dispute, see INTERNATIONAL RELATIONS). — In **Australia** general elections for the commonwealth parliament were held in the latter part of December. The most striking result of the election was the success of the Labor party (state socialists) due largely to the female vote which was cast for the first time in a commonwealth election. Of the nineteen senators elected ten were Labor candidates, the whole delegation from Victoria being of that party. The ministerialists lost half their strength in the Senate and at least five seats in the House of Representatives. Taking the two houses together the strength of the several parties is as follows: ministerialists, 34; members of the opposition, 40; Labor party, 37. The demands of the Labor party include compulsory arbitration in labor disputes, Australia for the white race, an eight-hour working day, abolition of capital punishment, state monopoly of the liquor traffic, old-age pensions and various other state-socialistic schemes. Where Mr. Chamberlain's fiscal policy was made a direct issue, as in New South Wales, it was rejected by the voters. The arrival of the new governor-general, Lord Northcote, in January was made the occasion of an imposing demonstration. At the opening of the commonwealth parliament in the same month the governor-general expressed the hope that the proposed federal assumption of the state debts would be satisfactorily arranged, that a system of old-age pensions would be adopted for the entire commonwealth, and that Mr. Chamberlain's policy of preferential trade would be acceptable to the parliament. He urged that immigration be suitably encouraged, and announced that bills would be introduced for the establishment of a court of conciliation and arbitration (see last RECORD, p. 738), for the regulation of the coasting trade, for the appointment of a high commissioner at London, for the restriction of trusts and industrial combinations, for the regulation of bankruptcy and for giving aid and encouragement to various industries. In March the federal premier, Mr. Deakin, made a vigorous defense of Australia's protection policy and announced that the government was prepared to alter the schedule in the direction of preferential trade with the mother country. — A legislative measure of note was an act reducing the number of members of the New South Wales legislature from 125 to 90 members. The House of Representatives and the senate have also recorded their grave objection to the introduction of Chinese labor into the Transvaal. On April 21 the government sustained a defeat in the House of Representatives on a Labor party amendment providing for the extension of the application of the compulsory arbitration bill to state employees. The

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Deakin cabinet resigned and was succeeded by a ministry headed by Mr. Watson, the leader of the Labor party. — In **New Zealand** the most important event was the enactment of a new tariff law providing for preferential trade with the mother country. The law imposes increased duties, ranging from 20 to 100 per cent, on a number of articles, and provides for reciprocity with foreign countries. The duty on tea is abolished. A protest was recorded against the introduction of Chinese labor into the Transvaal (see AFRICA). — In **India** the event of chief importance has been the expedition to Thibet (described above under INTERNATIONAL RELATIONS). Other noteworthy incidents were Lord Curzon's spectacular tour of the Persian Gulf, and the abolition of all countervailing duties on sugar produced in countries adhering to the Brussels convention. The financial condition is reported to be highly favorable, the estimated surplus amounting to nearly three million pounds.

France. — Of chief interest, in French politics, has been the further development of the **anti-clerical policy** of the government. In December Premier Combes introduced into the Chamber of Deputies a bill to forbid teaching by any religious order, authorized or unauthorized. It provided for the dissolution of such congregations as exist solely for the purpose of teaching and for the sequestration of their property; it provided also for the partial sequestration of the property of those congregations which are engaged in teaching, but which also maintain hospitals for the indigent. Five years were to be allowed for the complete execution of the measure. As it was estimated that approximately 3,500 schools would be affected, the bill also provided for an enlargement of the public school system at an estimated cost of $13,000,000. The introduction of this measure was followed by one of the sharpest parliamentary struggles of recent years. It was the subject of debate in both chambers for several months. On March 15 the government met with a slight check: an amendment was adopted extending to ten years the time limit for the suppression of religious teaching. On March 21 another amendment was carried, against the wishes of the government, exempting from the operation of the law seminaries for the training of religious teachers for service in the colonies. Finally, on March 28 the original bill as amended passed the Chamber of Deputies by a vote of 316 to 269. This measure completes the anti-clerical program begun by Waldeck-Rousseau in 1901 (see previous RECORDS). Tension between the French government and **the Vatican** was caused by a papal address to the sacred college arraigning the government for its policy toward the clergy. This criticism was resented in government circles, and a formal protest was reported to have been sent to the papal secretary of state through the French ambassador at the Vatican. Meantime the ministry has adopted drastic measures to prevent public criticism of its policy by the clergy and others in the service of the church. The expulsion from French territory of the Abbé Delsor, an Alsatian

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priest and deputy in the German Reichstag, who was to have delivered a public address at Lunéville, aroused not a little popular excitement and led to a stormy scene in the Chamber of Deputies on January 14. Interpellations concerning the expulsion were brought forward, but after a long and animated debate the action of the government was approved by a vote of 295 to 243. — The threatened ministerial crisis on account of the opposition to M. Pelletan's alleged incompetent and inefficient administration of the navy was avoided by Premier Combes's acceptance in March of the proposition to appoint a commission to inquire into the condition of the navy. Thereupon a vote of confidence was carried by a majority of eighty voices. — Other bills which have passed the Chamber of Deputies provide for railway construction in Morocco, for the appointment of a commission to inquire into the alleged complicity of certain officials in the Humbert frauds, and for the suppression of all decorations. The budget as submitted by the government was adopted without substantial change. — M. Brisson was elected to the presidency of the Chamber of Deputies to succeed M. Bourgeois. On account of dissensions among the socialist deputies, M. Jaurès failed of reëlection as one of the vice-presidents. — A matter of worldwide popular interest was the decision of the revision committee to recommend a rehearing of the **Dreyfus Case** (see RECORD of December, 1898, p. 766). On March 5 the criminal branch of the Court of Cassation granted the appeal of Dreyfus and the new trial began shortly thereafter. — In February negotiations were concluded for a new treaty between France and **Siam**. The new agreement confirms and continues with certain modifications the convention of 1902 (see RECORD of December, 1902, p. 734), provides for an adjustment of the boundary between Siam and Cambodia, and secures substantial commercial advantages to France.

GERMANY. — **The Reichstag** was opened on December 3 by Chancellor von Bülow in the absence of the emperor. All of the socialists, 81 in number, were conspicuously absent. The speech from the throne, which was read by the chancellor, announced that measures would be introduced for the rearrangement of the financial relations between the empire and the states and for the continuance of the present army footing without material increase of expenditure until April, 1905. It was also announced that the government would continue its policy of enacting social legislation for the benefit of the poor, that the "most-favored nation" agreement with Great Britain would be renewed for another year, that the bourse law would be reformed and that the Reichstag would be asked to aid in the construction of a railroad in German East Africa. On the second day of the session, the Reichstag was organized by the reëlection of Count von Ballestrem as president, over Herr Singer, the socialist candidate, who received 68 votes. The greater part of the session up to the close of the period under review has been taken up with the discussion of the budget, financial reforms and army

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measures. The budgetary statement revealed an unsatisfactory condition of the imperial finances, chiefly on account of increased expenditures and general business depression. It was for this reason that a contemplated increase of the army footing was postponed. It was announced that recourse would be had to a fresh issue of treasury bonds and to the refunding of an old issue of 4 per cents (40,000,000 marks) into $3\frac{1}{2}$ per cents. The financial reform bill, which has reached an advanced stage on the calendar, abolishes (except in the case of excises on spirits) the system by which certain imperial excises and duties are credited to the individual states as against the contributions (*Matrikularbeiträge*) due from them to the empire — an arrangement which has proved unsatisfactory. A measure of importance which the government submitted to the Reichstag was a bill to provide for the indemnification of persons who have suffered imprisonment while awaiting trial and who are subsequently acquitted of the charges against them. Bills have also been submitted to establish courts of arbitration for settling differences between merchants and their employees and to provide supplementary military pensions. A measure which excited great popular interest and elicited not a little protest was the **repeal of the anti-Jesuit law** of 1872 which prohibited Jesuits from residing in Germany. Negotiations have been in progress some months for the renewal of the commercial treaties with Russia and Italy. In March the basis of an agreement with Italy was reached but an early agreement with Russia seems improbable. — In consequence of the **revolt of the Hereros** in German Southwest Africa (see AFRICA), $705,300 were appropriated in January for the dispatch of reinforcements. In March, supplementary bills were submitted, appropriating $1,675,000 to defray the expenses of suppressing the revolt and to relieve the settlers who had sustained losses in consequence of the uprising. — The elections for the **Prussian Landtag** resulted in the return of 148 Conservatives, 56 Independent Conservatives, 97 Centrists, 110 Liberals of three different shades of opinion, and 13 Poles and Danes. For the first time the socialists entered actively into the campaign; but although in the last Reichstag elections they cast forty per cent of the votes (see last RECORD, p. 741), on account of the disproportionate influence which the Prussian election laws ("three-class system") give to those paying higher taxes they were unable to elect a single member to the Landtag. — In **Saxony** the government has undertaken to pass a bill providing for an extensive scheme of electoral reform but retaining the three-class system. — An incident of industrial interest has been the formation of a steel combination embracing twenty-six large steel manufacturing concerns.

AUSTRIA-HUNGARY. — In both portions of the dual monarchy the period under review has been characterized by the continuance of obstructionist tactics in the parliaments. The termination of the crisis in the **Hungarian Diet**, as reported in the last RECORD (p. 742), proved

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to be only a truce, and the opponents of the military measures proposed by the government soon renewed the contest. On December 4, in consideration of certain promised concessions from the government, the opposition again decided, by a vote of 46 to 28, to cease obstruction; but after a brief interval the struggle broke out afresh. Disorderly scenes in the chamber were of frequent occurrence and legislative procedure was practically blocked. Appeals of the premier to the obstructionists to allow the recruiting bill to pass and threats of drastic measures to end obstruction were in vain. Finally, on March 10, after a crisis lasting fifteen months, the obstructionists announced that they were compelled by failing strength to abandon the contest, and that they would cease to oppose the recruiting bill and allow the business of parliament to proceed. A few days later the recruiting bill, the supply bill and a bill of indemnity covering the period during which the government was carried on without appropriations, were passed without further hindrance. The announcement by the premier of his intention to introduce a measure for the reform of the suffrage was received with approval on all sides. — The **Austrian Reichsrath** opened on November 17. The Czechs, who had been awaiting the end of the Hungarian crisis with the intention of demanding for Bohemia such national and linguistic concessions as should be granted to the Magyars, at once announced their program and entered upon a policy of obstruction to secure recognition of their demands. These were stated to be: the federalization of the Hapsburg monarchy; the equality of the Czech and German languages in the central administration and public life of Bohemia; the establishment of a second Czech university in Moravia and the creation of technical and secondary schools in various other provinces for the benefit of the Czech population; the development of the Czech national spirit; the reform of the electoral system; and the extended use of the Czech language in the army. The government was powerless to overcome the Czech obstruction, and at the close of this RECORD neither the recruiting bill nor any other legislation of importance had been enacted, nor had indemnity been granted for last year's expenditures. The budgetary statement of the finance minister made at the opening of the Reichsrath showed, by means of rather sanguine estimates, a small surplus. A loan of 231,000,000 crowns is proposed, to be used chiefly for public works. — On December 15 the Austro-Hungarian Delegations met at Vienna. The emperor, in the speech from the throne, announced his firm determination to maintain the Triple Alliance and declared that Austria and Russia were equally resolved to maintain peace and the *status quo* in the Balkans. (See INTERNATIONAL RELATIONS.)

RUSSIA. — The event which has overshadowed all others in Russia was the outbreak of **the war with Japan** in February (see INTERNATIONAL RELATIONS). Since that time the activities of the imperial government have been directed chiefly to devising ways and means for pro-

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secuting hostilities. General Sukaroff was appointed minister of war to succeed General Kuropatkin, who was placed at the head of the army in the East; and M. Kokovzoff was appointed minister of finance to succeed M. Pleske, in spite of great pressure brought to bear upon the czar to reinstate M. de Witte (see last RECORD, p. 742). The budgetary statement for 1904 estimates the ordinary receipts at $990,046,000 and the expenditures at $983,229,125. The increased burdens imposed by the war with Japan have necessitated heavy loans and new taxes. — Noteworthy in the internal affairs of Russia was the completion by Minister von Plehve of a scheme for reforms in the condition of **the peasantry**, in accordance with the manifestos of the Czar issued last March (see RECORD of June, 1903, p. 377). The preservation of the peasantry as a class distinct and separate from other classes, the retention of the commune and the inalienability of peasant lands are features of the existing system which are to remain untouched. The proposed scheme of reform is to be submitted to committees in the various provinces for further discussion and elaboration. Meantime other measures have passed beyond the stage of projects. A law has been published determining the competence and regulating the procedure of the cantonal or peasants' courts and specifying the penalties that may be inflicted. Corporal punishment is retained, but women, men over 35 years of age, persons who have been educated in district schools and those who have been employed for more than three years in the public service are exempted from this penalty. On February 19 a decree was issued abolishing the censorship upon all news and other telegrams intended to be sent abroad. The internal censorship, however, is retained. — With a view to a revision of the laws relating to **Jews**, a circular was sent to the governors of the fifteen provinces in which Jews are allowed to reside, calling for reports from these officials upon the difficulties experienced in administering the laws in question. The majority of the replies were distinctly unfavorable to the Jews, and some of the reports recommended the expulsion of all Jews from the provinces in which they are now allowed to live. A commission under the presidency of Prince Obolensky, formerly governor of Kharkoff, has been appointed to consider the recommendations of the various governors and to propose such alterations in the laws as it may see fit. In February it was reported that the commission had decided to establish greater restrictions upon the Jews in Russian Poland. In December a decree was issued forbidding American Jews to enter Russia hereafter without a special permit from the minister of the interior. In December and March the persons charged with complicity in the Kishineff massacres of last year (see RECORD of June, 1903, p. 378) were put on trial. The first series of trials, in which thirty-seven persons were arraigned, ended on December 22 and resulted in the conviction of twenty-five and the acquittal of twelve of the accused. The second trials, which ended March 11, resulted in the

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acquittal of thirty-six and the conviction of fifteen. Four of the accused were convicted of murder and sentenced to terms of imprisonment ranging from four to twenty years. The others were convicted of rioting and received light sentences, ranging from four months to two years' imprisonment. — Of scarcely less interest have been the trials before a military tribunal at St. Petersburg of seven persons charged with complicity in the murder of various high officials. Three of the accused were condemned to death, three were sentenced to four years' penal servitude, and one, a female student, to three months' imprisonment. — Serious **disturbances in the Caucasus**, amounting almost to open rebellion, have occurred, chiefly owing to the confiscation of the property of the Armenian church (see last RECORD, p. 743), and symptoms of increasing unrest and disaffection have been manifest in Southeast Russia. — The Russianizing of **Finland** has continued without interruption. On December 17 a ukase was issued by the Czar practically depriving the duchy of all its remaining rights of municipal and communal self-government. It empowers the provincial governors to quash the election of all persons politically objectionable to the government and to appoint others in their stead. On December 24 the governor-general was empowered by another order to remove administrative officials and school teachers without a hearing. Banishment of prominent Finns has continued, the total number up to the present amounting to forty-five. Notice was given in December that the Finnish diet would be permitted to assemble in 1904 only in case the governor-general should report that the duchy was satisfactorily pacified.

ITALY. — At the opening of **parliament** on December 1, Premier Giolitti announced the program of the new ministry. It included the negotiation of commercial treaties with Germany, Austria-Hungary and Switzerland; the refunding of the public debt to the financial advantage of the government; the renewal of agreements with the railroad companies or, if necessary, the operation of the roads by the state; and a series of measures for the improvement of the economic and industrial conditions of South Italy (see RECORD of June, 1903, p. 378). The measures proposed for the benefit of South Italy include the construction of roads, canals, aqueducts and sanitary works, the reduction of communal debts, the lowering of taxes and other fiscal reforms. Bills were introduced providing for the abolition of compulsory domicile and for making Sunday an obligatory day of rest. The latter measure was rejected by the chamber as not being practicable in the form in which it was cast. Three days after the announcement of the ministerial program the government secured a vote of confidence (284 ayes, 114 nays), the opposition consisting of the socialists and of the two groups of which Signors Sacchi and Sonnino are the leaders. With this endorsement the ministry entered actively upon the execution of its program. In February the first of the series of measures for the benefit of South Italy was passed.

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It provides for an extensive system of money advances to the cultivators of grain in the Basilicate, for fiscal reforms, and for the execution of public works. **The financial condition** of Italy has been favorable during the period under review. The budgetary statement of Signor Luzzatti, financial minister, showed a considerable surplus for the year 1902–03 and an estimated surplus for the present year exceeding six million lire. The scheme for refunding the public debt provides for the conversion of the four and one-half per cent and five per cent stock on a basis which will insure an annual saving of 46,000,000 lire. The conversion of the four and one-half per cents is now proceeding with success. In the matter of commercial treaties the government has been less successful. The negotiations with Austria-Hungary failed chiefly on account of disagreement concerning the tariff on Italian wines and fruits imported into Austria-Hungary. On December 31 a provisional treaty was concluded which is to remain in force until October, 1904. The basis of a treaty with Germany has been agreed upon, and negotiations with Switzerland have begun under favorable auspices. — There has been rather more than the usual airing of **political scandals**. Much interest was excited by a libel suit prosecuted by Signor Bettolo, minister of marine in the Zanardelli cabinet, against Signor Ferri, a Socialist deputy who had charged the minister with grave official misconduct. The trial lasted fifty-one days and resulted in the conviction of Signor Ferri, who was sentenced to imprisonment for a period of fourteen months and to pay a fine of 1516 lire. Similar charges having been made against the present minister of marine, Admiral Mirabello, the government proposed and the parliament adopted a bill constituting a commission to investigate the condition of the navy. Severe attacks were made by the socialists upon other members of the cabinet, one of whom, Signor Rosano, was driven to suicide. The government's policy in Italian Somaliland was severely criticized; chiefly on account of the use which the British were allowed to make of certain places therein in the course of the campaign against the Mullah. — Miscellaneous measures and events were: the enactment of a law providing for the admission of women to the bar; the issue of a royal decree creating twenty-eight new senators; the rejection at this session also of the divorce bill which has been before parliament for several sessions; the death on December 26 of ex-Premier Zanardelli, who resigned from the cabinet on October 21 (see last RECORD, p. 745). Renewed "Irredentist" disturbances have been noted above (see INTERNATIONAL RELATIONS).

SPAIN. — The Villaverde cabinet resigned on December 3, after a tenure of less than six months (see last RECORD, p. 745). A **new cabinet** of an ultra-Conservative type was formed by Señor Maura, who is pledged to secure the passage of the naval reconstruction bill and a rigid enforcement of the policy of repressing republicanism. Among the measures proposed by the new government was a bill for the reform of

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the electoral system, including the establishment of compulsory voting. In February the government bill appropriating 1,000,000 pesetas for military purposes passed the chamber by a vote of 139 to 114. The position of the Maura ministry has been rendered precarious and the anti-clerical movement has been stimulated by the appointment of a former archbishop of Manila to the bishopric of Valencia. The appointment gave occasion for interpellation in the Cortes, and many public meetings were held throughout Spain to protest against the action of the government. A fruitful theme of discussion in the Cortes has been Spanish interests in Morocco, particularly since the conclusion of the Anglo-French colonial treaty (see INTERNATIONAL RELATIONS). — The municipal elections of November 8 resulted in unexpected victories for the Republicans. In January the agitation throughout the country against the octroi duties on food stuffs culminated in serious riots in several provinces. An unsuccessful attempt upon the life of Premier Maura was made by an anarchist at Barcelona on April 12.

MINOR EUROPEAN STATES. — **In Belgium** the communal elections were held in October. The Liberal party carried all the larger cities and most of the larger towns. In parliament a considerable portion of the session was taken up with the discussion of a labor accident bill, which finally passed. Other bills which became laws regulate the sale of oleomargarine, establish labor pensions, reduce the tax on sugar, and give greater permanence of tenure to communal employees. The industrial and financial condition of Belgium has been exceedingly prosperous. The royal lawsuit over the will of the late queen of the Belgians was the most generally discussed topic at the close of the period under review. — In **Holland** increased expenditures for the army were authorized and a new customs tariff was adopted containing protectionist features. — The politics of **Denmark** have been enlivened by energetic attacks of the socialists on the government and by an agitation in behalf of female suffrage. An important law was enacted for the reform of the financial and judicial service. A much-discussed measure which failed of adoption was a project for re-establishing corporal punishment in certain cases. — In **Norway** the Storthing unanimously rejected the much-agitated project conferring upon women the parliamentary suffrage. — In **Switzerland** on December 17, M. Comtesse (Radical) was elected president of the confederation for the year 1904. Three important measures were rejected by popular vote. The first was a proposed amendment to the constitution providing for the apportionment of members of the National Council according to Swiss population and not according to total population, the purpose being to effect a reduction of the representation of the cities. This amendment was defeated by a majority of 199,000 votes. The second measure was a proposition to increase the excise on rum: it was rejected by a majority of 60,000. The third was a proposal to add a new offense to the criminal code, making it un-

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lawful for persons not serving in the army to incite persons in military service to disobedience or mutiny. This measure was severely denounced by the socialists as an encroachment upon the liberty of speech and of the press and was rejected by a majority of 143,000 votes. Great progress is being made on the new federal codes. A draft of the civil code has been laid before the chambers for consideration and a draft of the criminal code is expected to be ready at an early date. Measures which have become law are a naturalization act and an act providing grants from the federal treasury in aid of primary schools. Negotiations for revision of the commercial treaties with Germany and Italy are in progress. In December a treaty was concluded with Italy by which that country transfers to the confederation the Simplon railway concession through Italian territory. — In **Portugal** the Cortes opened on January 2. The royal speech announced the introduction of measures for a renewal of contracts with the bank of Portugal in order to diminish paper currency, for the imposition of import duties payable partly in gold, and for the establishment of a system of wireless telegraphy with the Azores. — In **Greece** the ministry resigned on December 16 in consequence of inability to carry through its policy. Ex-Premier Theotokis was entrusted with the task of forming a new cabinet. He announced as the leading feature of his program the reorganization of the army. After a prolonged debate the chamber gave its approval to the measure, accepting the requisite financial burdens. — (For Balkan politics, see INTERNATIONAL RELATIONS.)

V. AFRICA AND ASIA.

AFRICA. — A general election was held in **Cape Colony** in February for members of the colonial parliament. The race question was the main issue, the Progressives advocating more harmonious relations between the Dutch and English races in the colony, the Afrikander Bond (Boer party) demanding Dutch supremacy. The Progressive party secured a majority of five seats over the Bond, thus insuring British supremacy in the colony. This outcome is also regarded as a victory for South African federation. Sir Gordon Sprigg, who had represented East London for nearly thirty years, failed to secure a reëlection. Immediately after the election he resigned the premiership which he had held for about twelve years, and Dr. Jameson was summoned to form a cabinet, which he accomplished in the latter part of February. At the opening of the colonial parliament on March 4, measures were announced for the increase and redistribution of seats: three members to be added to the Legislative Council and twelve to the House of Assembly, the new seats in the latter body to be distributed mainly among the larger towns. — In the **Transvaal** the scarcity of labor has continued to overshadow all other questions. In the latter part of November the Labor Commission re-

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ported that the demand for native labor for agriculture, mining and most of the other industries was greatly in excess of the supply (the shortage was estimated at 241,000 laborers), and recommended the importation of Chinese coolies. For many months the expediency of introducing Asiatics has been thoroughly discussed throughout the colony, the proposition being generally favored by the British residents and opposed by the Dutch. Finally, on December 30 a motion in favor of the introduction of Asiatic labor passed the Legislative Council by a vote of 22 to 4 and in the latter part of January a labor importation ordinance was enacted. It authorizes the importation of Chinese laborers under certain rigid conditions, among others that importers shall procure licenses from the government and furnish security that upon the expiration of the period of contract, which cannot exceed five years, the laborer shall be returned at the expense of the importer to the county of his origin; that no person so imported shall be employed except in unskilled labor in the mines, and that no laborer thus employed shall be allowed to leave the mines without a permit from an authorized person and even then for not longer than forty-eight hours. Industrially and financially the condition of the Transvaal has been unfavorable. There has been an increasing business depression, due chiefly to the scarcity of labor, and a resultant treasury deficit amounting to $5,000,000. — In the **Orange River Colony** a measure providing for the addition of four official and four unofficial members to the Legislative Council has received the sanction of the king. — **German Southwest Africa** has been disturbed by an uprising of the natives (Hereros). Besides destroying houses and farm implements and driving off cattle, they killed many of the German residents, one hundred and thirteen having been put to death with savage cruelty in one district alone. On March 13 the German troops suffered a severe defeat at the hands of the Hereros (see GERMANY). — The British **Somaliland Expedition** against the Mad Mullah (see RECORD of June, 1903, p. 383) has been successful. In January it was reported that the British forces had routed the Mullah and killed 1,000 of his followers. On February 26 General Manning succeeded in killing 150 of the Mullah's men and capturing 3,000 camels. — The revolt against the sultan of **Morocco**, headed by the pretender Omár Zarahuni, (see RECORD of June, 1903, p. 383) has not been suppressed and the governmental finances are reported to be in a state of collapse.

ASIA. — The politics of **Japan** have been dominated, during the period under review, first by the negotiations and then by the war with Russia (see INTERNATIONAL RELATIONS). The Imperial Diet met on December 10. The emperor's speech referred in the briefest manner to the progress of the negotiations with Russia, declaring only that the ministers had been instructed to attend carefully to their duties. The lower chamber promptly adopted a reply, denouncing the policy of the cabinet as a failure and expressing "profound regret" that the measures of the

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government were so ill adapted to the needs of the situation. The emperor requested the chamber to rescind its action, and upon its refusal he dissolved the Diet. The elections, held on March 1, resulted in a notable decrease in the strength of the Sei yu Kai (Ito's party) and a corresponding increase in the number of the Independents. The new Diet met March 20 to adopt measures necessary to carry on the war. The state tobacco monopoly was extended; increased taxes were imposed on land, on wine and other articles; certain new taxes were introduced; and a loan of $50,000,000 was authorized. The government assumed control of all private railroads and impressed into its service the ocean line steamships. Two cruisers were purchased from the government of Argentina for $7,500,000. (For other Asiatic events, see INTERNATIONAL RELATIONS, BRITISH COLONIES AND INDIA, and FRANCE.)

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